UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/120
9 March 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 20 of the provisional agenda

RATIONALIZATION OF THE WORK OF THE COMMISSION

Letter dated 26 February 1999 from the delegations of Algeria, Bhutan, China, Cuba, Egypt, India, Iran (Islamic Republic of), Malaysia, Myanmar, Nepal, Pakistan, Sri Lanka, Sudan and Viet Nam addressed to the secretariat of the Commission on Human Rights

The delegations of Algeria, Bhutan, China, Cuba, Egypt, India, Iran (Islamic Republic of), Malaysia, Myanmar, Nepal, Pakistan, Sri Lanka, Sudan and Viet Nam have the honour to transmit the paper annexed hereto* which contains the comments, observations and alternate recommendations of the aforementioned countries on the report of the Bureau of the fifty-fourth session of the Commission on Human Rights submitted pursuant to Commission decision 1998/112 (E/CN.4/1999/104).

The above-mentioned delegations believe that the attached paper would contribute to the discussions which would be held in this regard and request that it be distributed as an official document of the fifty-fifth session of the Comission on Human Rights.

---

* The annex is reproduced as received in the language of submission only.

Annex

February 26, 1999

COMMENTS, OBSERVATIONS AND ALTERNATE RECOMMENDATIONS ON THE REPORT OF THE BUREAU OF THE 54TH SESSION OF THE COMMISSION ON HUMAN RIGHTS PURSUANT TO THE COMMISSION ON HUMAN RIGHTS' DECISION 1998/112

(Doc. E/CN.4/1999/104)

Introduction

A - General Comments

B - Detailed Analysis

C- Vision for the Future

Introduction :

1. The delegations presenting this paper appreciate the efforts and the work done by the Bureau in drawing up its report (hereafter 'the report') on the Review of the Special Mechanisms of the Commission on Human Rights (hereafter 'the review'). The report has the merit of stimulating a debate on many important issues affecting the work of the Commission on Human Rights and its mechanisms. However, the approach adopted in preparing the report seems to be partial and incomplete in many ways and the Bureau appears to have adopted a selective approach focusing on only some issues while neglecting the need for an overall perspective to the range of problems confronting the human rights arena, especially those identified in the Vienna Declaration and Programme of Action.

2. This paper is a response to the various proposals contained in the report of the Bureau and has been prepared with a view to enriching the debate on different ways and means of achieving genuine improvement in the human rights situation across the world. It contains an analysis of the proposals made by the Bureau and attempts to present alternate suggestions and recommendations. In doing so an attempt has been made to spell out a new vision for international cooperation in the field of human rights for the future.

3. The Bureau draws its mandate from Decision 1998/112 of the Commission on Human Rights[1] which was adopted by the Commission as a compromise following the tabling of a draft decision (L.2) and the reformulation of L-2 by a group of countries to include the main elements of draft resolution L.105 presented by Cuba at the 53rd Session of the Commission on Human Rights. The draft decision contained in L.2 asked for greater transparency in negotiations and the setting-up of a mechanism allowing for the maximum participation of all members of the Commission as well as other member states of the UN in the negotiating process in the Commission on Human Rights. The main elements of draft resolution L.105 tabled by Cuba in 1997 entitled "Restructuring and Revitalization of the Commission on Human Rights" called on the Commission to consider a) re-structuring of the agenda; b) documentation for the Commission; c) Commission's method of work (time-limits for statements, consultations during the Commission, participation of NGOs.); d) Review of Special Procedure System and e) Review of staffing policy.

4. Given this background, it is disappointing that the review has not sought to develop a vision which goes beyond the prevailing orthodoxy or put forward an alternate view for the promotion and protection of human rights.

---

[1] Decision 1998/112 reads as follows: "At its 60th meeting, on 24 April 1998, the Commission on Human Rights, with a view to enhancing the effectiveness of the mechanisms of the Commission, decided, without a vote, to appoint the Bureau to undertake a review of those mechanisms with a view to making recommendations to the Commission at its fifty-fifth session".

General Comments

5. Ideally, the process of reviewing mechanisms should have been a technical exercise aimed at enhancing the effectiveness of the CHR mechanisms by ensuring that the mechanisms observe the ideals of objectivity, impartiality, universality and de-politicisation as well as the indivisibility of all rights. However, the Bureau's overall approach has been to equate effectiveness exclusively with enhanced monitoring and compliance. For the Bureau, the right to raise country situations must remain sacrosanct. Further, under the Bureau's proposals, every mechanism will be utilized to monitor country situations. This will virtually imply that the entire Commission on Human Rights session becomes an exercise focusing on Country Situations, which will be taken up thrice (a) during consideration of reports of thematic mechanisms, (b) the 1503 procedure, as well as (c) the agenda item on Country Situations.

6. The Bureau's proposals, which are supposedly meant to enhance the effectiveness of the Commission on Human Rights and its mechanisms, are in reality likely to be only counter-productive and lead to further politicization of the Commission on Human Rights and its activities. Moreover, it has failed to address the concern among developing countries regarding growing politicization, double standards and selectivity and the need to ensure that no country be allowed to use human rights to achieve political or any other non-human rights related objectives.

7. The 'effectiveness' of the Commission on Human Rights and its mechanisms is not derived from their capacity to coerce or pressurize countries through a narrow focus on monitoring and finger-pointing. It is a function of their capacity to engender confidence and cooperation through the identification of approaches that eschew politicization and selectivity, assist in the identification of solutions and facilitate the effective enjoyment of human rights at the grassroots levels, particularly through building and strengthening national capacities. It should be recognized, in this regard, that enlarging and strengthening the role of the monitoring mechanisms of the Commission on Human Rights; expanding the scope of discussions on country situations and using the Commission on Human Rights and its Bureau as tools for forcing States to cooperate with human rights mechanisms are unlikely to genuinely promote the effectiveness of the Commission on Human Rights.

8. It was with the above constructive approach in mind that the LMG commenced in 1996 a process that sought to remove the distrust and the North-South divide in the Commission on Human Rights, called for an end to politicization and selective finger-pointing and instead, the promotion of dialogue, cooperation and consensus building. This is also an issue which the Asian Group in its collective submission as well as submissions by many individual countries to the Bureau emphasized. However, these issues have been side-tracked by the Bureau and deferred for the future on the grounds that not enough consensus exists at present over what requires to be done.

9. Currently the human rights debate is framed around the rigid concept of the individual as a claimant and the State as the violator of human rights. The increasing pace of globalization and current developments however, proven that the structures and practices of globalization itself may often, directly and indirectly, be a cause of violations of human rights, not only with regard

to economic, social and cultural rights, but also with regard to civil and political rights. The significance of this phenomena is threefold:-

a. Reliance of human rights mechanisms which seek to apportion blame and punish states, without considering the prevailing international structures is obviously misplaced.

b. Since current international law applies only to identifiable action (i.e. perpetrated by the State) rather than practices associated with supranational forces (i.e. globalization), which provide the context of action, a monitoring approach may be capable of addressing the consequences of human rights violations, but not its causes.

c. The fact that international structures are a cause of human rights violations highlights the importance of international cooperation in the field of human rights.

10. From para.10 above it is clear that international cooperation has two aspects:-

a. International cooperation as an approach, to be contrasted with confrontation.

b. International cooperation as primary means of addressing the international structures which are a cause of human rights violation.

11. However, the report interprets international cooperation, legally and practically as merely an obligation of result. That is to say, the entire focus of the report is on what states are obliged to do, without any thought being given to the relevance, credibility and accountability of Commission on Human Rights' mechanisms. The fact that the pursuit of international cooperation demands greater emphasis on the promotional aspects (rather than an exclusive focus on compliance and monitoring) and the mainstreaming of technical cooperation in all human rights activities appears to have unfortunately been missed out.

12. The Bureau's report also appears to overlook the balances achieved in the Vienna Declaration and Program of Action. The VDPA reaffirmed the "universal, indivisible and interdependent and interrelated" nature of human rights and the need for the international community to "treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis". The Bureau's report, on the one hand, focuses mainly on promoting civil and political rights. On the other hand, it seeks to merge and cut down mandates related to economic, social and cultural rights. As a result, the need to ensure the principle of indivisibility of human rights by directly addressing the existing imbalance between Civil and Political Rights on one hand, and Economic, Social and Cultural Rights on the other, appears to have been neglected.

13. Moreover, there is also no reflection of "particularities", as contained in the Vienna document which recognized "the significance of national and regional particularities and various historical, cultural and religious backgrounds." It appears that the report intends to treat all countries alike, irrespective of their levels of development, religious and cultural orientations.

14. The problem of non-cooperation of states with mechanisms cannot be simply reduced to a lack of political will. For the vast majority of states, cooperation with and acceptance of the

mechanisms depend on objective elements, such as the sensitivity of the mechanisms to the specificities of the state concerned, its usefulness in addressing the problems encountered, as well as the level of encouragement that it can provide for progressive steps in the promotion and protection of human rights. It is in this connection that a code of conduct for the mechanisms becomes relevant and essential.

15. Paradoxically, while the Commission on Human Rights and its Bureau assisted by the High Commissioner for Human Rights will conduct enhanced scrutiny of mandatory compliance by states with mechanisms, states are asked to give up their responsibility for drawing up of a code of conduct - and this task is sought to be entrusted to the UN Secretary General (UNSG). In fact, States are not even expected to monitor and evaluate the functioning of the Commission on Human Rights mechanisms, which are expected to deal with these matters themselves and draw up best practices along with the High Commissioner for Human Rights. Clearly, it is the Commission on Human Rights and not the United Nations Secretary General who should determine the code of conduct for mechanisms and evaluate their performance on a regular basis.

16. A key element in the Bureau's approach has also been to expand its own scope and functions, far beyond those performed by any Bureau in the past and other such bodies elsewhere in the UN system. This includes extending to the Chairman of the Commission the power of appointment of, inter alia, members of the Sub Commission and providing a substantive monitoring and censuring role to the Bureau. Overlooking the fact that the rules of procedure provide only for a decision making role on procedural matters, the report seeks to make the Bureau an inherent and permanent part of the monitoring activities of the Commission on Human Rights. This is an unhealthy development and will only result in reducing the credibility of the Bureau.

17. From a legal point of view, the Bureau has a mainly representative nature and it does not enjoy any independent powers. Bureau members, first and foremost represent the views of their regional groups and their actions should therefore at all times fully reflect this. There is no scope or possibility for the Bureau to act and perform functions as a surrogate for the Commission on Human Rights in a manner that undermines the responsibility of the Commission on Human Rights itself and makes regional groups, from which the Bureau members draw their authority, irrelevant. An executive role for the Bureau is effectively precluded.

18. According to the report, regional groups are one of the main causes of politicization and the North-South divide in the work of the Commission. It must be pointed out, however, that politicization is not the result of developing countries coalescing around regional lines. Rather, the principle of regionalism is regularly used by one regional group as a means of pointing fingers at others.

19. The report also attempts to give the High Commissioner and the secretariat an intrusive monitoring capacity to the extent of suggesting that the High Commissioner may be one of the initiators of the Commission's country specific decisions. Such recommendations will only bring to naught efforts to increase cooperation and decrease politicization among states.

20. Though one of the objectives of the review was to avoid duplication and overlap, some of the proposals of the Bureau go exactly in the opposite direction. For example, the proposed reform

of 1503 will do nothing to alleviate the problem of duplication of reporting obligations (to both 1503 and thematic mechanisms) nor will it ensure that only allegations relating to gross or systematic abuses are referred to States. It will also undermine confidentiality and reduce the time frame for allegations reaching the Commission on Human Rights to an impractical level. Further, it will remove the objective filter of independent Sub Commission experts and place decisions in the hands of an untested and new 5-member expert body appointed by the CHR Chairman. Moreover, the reforms proposed envisage an increased role for the Secretariat in screening communications, a move which is politically inadvisable and practically impossible given the current workload of the secretariat.

21. For these reasons, screening of communications must continue to be done by an impartial body and the present structure of a Working Group on Communications comprising members of the Sub Commission and Working Group on Situations comprising members of regional groups must be retained. The only reform required is to have the Working Group on Communications meet twice, first to screen communications and decide what should be referred to Governments for a response and then, to decide on the basis of responses from Governments which communications should be referred to the Sub Commission.

22. Any attempt at reforming an institution should aim at improving its functioning and should not aim at its gradual de facto elimination. While the recommendation that the Sub Commission should not pass resolutions and should focus on its think- tank role is welcome, the remaining proposals are without adequate justification. Particularly so, when the Sub Commission has been engaged in a series of reforms on its own and is gradually increasing its attention to various issues pertaining to Economic, Social and Cultural Rights.

23. It has been contended, in the context of Working Groups, that consensus is not always necessary in the drafting of standard setting instruments. This proposal will only undermine the objective of securing international cooperation for promoting human rights on a universal basis. It would also go against the spirit of the relevant General Assembly resolutions which call for the establishment of standards which enjoy the widest possible support.

24. Finally, the report does not provide any vision or conceptual idea on how a balanced human rights approach can be constructed and maintained. There is also no reflection in the report on the need for the Office of the High Commissioner on Human Rights' to sustain all elements of the human rights program in a balanced and non selective manner through the adequate provision of staff and resources.

25. In conclusion, the recommendations contained in the Bureau's report should have been more balanced and should have had as its principal aim enhancement of the effectiveness of the CHR mechanisms through further promotion of international cooperation.

26. A premature and over ambitious effort to reform the Commission on Human Rights should not result in the deterioration of whatever has been achieved so far in the field of human rights, especially with regard to the limited levels of cooperation among states. (Particularly so in view of the inadequate resources of the Office of the High Commissioner on Human Rights and the fact that the cooperation of all countries is critical to the task of marshaling more resources).

27. As per the terms of decision 1998/112, the Bureau has completed its mandate by making available its recommendations. It is now up to the Commission on Human Rights and the States to decide the future course of action. The Bureau's proposals should be subject to wide ranging and intensive scrutiny and cannot be considered piecemeal. Towards that end, it is essential that an open ended Working Group of States be set up to examine all important issues that the Bureau has failed to adequately address and to review the Bureau's proposals with a view to modifying them, as appropriate.

Detailed Analysis

28. In para. 3 of its report, the Bureau states that various governments and specialized agencies had made written comments and proposals in connection with the review process. However, the report does not reflect all those proposals equitably. Furthermore, regrettably the Bureau did not involve regional groups in **all the steps** of the preparation of this report which appeared to give the Bureau the role of an "independent organ" with powers of its own, and not a geographical representation of member states. This might be an interesting idea, but simply does not reflect the current practice and legal premises of the Commission on Human Rights.

29. The only reference to L.2 in the entire text is in Para 6. Here, the Bureau merely refers to these issues, concludes that the limited deliberations till date do not provide sufficient foundation for immediate or definitive recommendations and has contented itself with encouraging sustained efforts in this area. Given the background of the review process itself, L.2 and L.105 should have been its starting points. It needs to be further noted in this regard that the Asian Group had in its collective submission clearly expressed the view that this exercise should be seen as part of the overall rationalization process of the work of the Commission on Human Rights and that it should be followed by a comprehensive review of the work of the Commission on Human Rights and the Third Committee of the United Nations General Assembly.

Alternate Recommendation 1 - Establish an open ended Working Group of States to discuss L.2, L.105 issues and the Bureau's report and proposals submitted by individual delegations.

30. The Bureau in para. 7 of the report has excluded any discussion of the mandate of the High Commissioner for Human Rights. At the same time, it has gone on to make recommendations to the High Commissioner in the light of General Assembly resolution 48/ 141. One of the most important aspects of this General Assembly resolution is the High Commissioner's role in implementing the Right to Development. Unfortunately, this area has been completely overlooked by the Bureau. Similarly, the creation and establishment of a balanced human rights program and the need to allocate adequate human and financial resources for capacity building, Right to Development, Economic Social and Cultural Rights, technical cooperation etc, are also missing from the report.

Alternate Recommendation 2 - Include the establishment of a balanced human rights program in the agenda of the above WG

31. Para. 9 of the Bureau's report overlooks the fact that the Sub Commission's mandate has been progressively refined and improved by the Commission on Human Rights particularly through resolutions adopted over the last few years. The analysis in para. 19 of the report recognizes that there has been a proliferation of special procedure mandates and it argues against arbitrary cut-backs or limitations to the mandates. However, the recommendations that follow propose actions contrary to this analysis by arbitrarily recommending the merger or elimination of certain mandates. The mandates that have been chosen for merger or elimination are those important for developing countries, for example the merger of the mandate of the Special Rapporteur on Structural Adjustments and the Special Rapporteur on Foreign Debt. The report fails to comment on concerns about an imbalance in the thematic and related mechanisms between Civil and Political Rights and Economic, Social and Cultural Rights.

32. The guiding principles as contained in para.11 of the Report fail to adequately express the aspirations of many governments from the developing countries in relation to the following :

- the need to avoid politicization, double standards and selectivity, or the use of human rights for achieving political and economic objectives;

- the need to strike a balance between individual and collective rights;

- the growing need, especially in this era of liberalization of trade and globalization of the economy, to implement and operationalize the Right to Development. In this way, the guiding purposes could be considered as a set back to the achievements of Vienna Declaration and Program of Action.

- On the other hand, the definition of and the purpose of the exercise of reviewing the mechanisms confuses two different concepts: "Enhancing the effectiveness" of the Commission mechanisms, which is the agreed purpose and "strengthening mechanisms", which is one of the possible means of achieving that purpose.

33. The Bureau in **Observations 1 & 2** describes its mission statement as enhancing the capacity of the UN to promote and protect human rights and to prevent their violations. It states that maximum de - politicization is critical to advancing the above purpose. Despite this statement, the substance of the recommendations in the report are aimed at tightening the monitoring mechanisms, expanding the scope of discussions on country situations and using Commission on Human Rights and its Bureau as tools in forcing States to cooperate with human rights mechanisms. Such efforts are likely to be only counter productive and lead to further politicization.

34. **Observation 3** makes clear the emphasis of the Report namely - enforcing cooperation of so - called "recalcitrant Governments" with the Commission on Human Rights and its mechanisms. According to the Bureau, *the essential foundation on which the effectiveness of the Commission and its mechanisms rests is the responsibility of all governments to cooperate fully with those mechanisms.* Without in any manner contesting the need for all Governments to cooperate with the Commission on Human Rights and its mechanisms, it needs to be pointed out that the above is a very simplistic view. This not only characterizes the monitoring driven approach to human rights but also ignores the fact that the large majority of countries are cooperating with

mechanisms. The need is to find out why some mechanisms engender cooperation while others do not.

35. Para. 15 of the Bureau's report does not address fully the obstacles to achieve such cooperation. Non-cooperation should not be seen only from the perspective of the lack of political will. One can perfectly conceive legitimate reasons for some cases of non-cooperation, namely subjectivity, double standards, selectivity, misuse of the mechanisms and sometimes special circumstances related to internal situations and conditions in a particular country.

36. Violations of human rights occur in every society and the effectiveness of the Commission on Human Rights must be judged by the results it produces on the ground in all parts of the world in terms of a higher level of protection for people. Real change occurs on the ground only as a result of a favorable international environment, the work of national institutions and through technical cooperation programs aimed at building national capacities. Monitoring cannot on its own create national will or solve any problem and if cooperation is not forthcoming, mechanisms also have a responsibility to bear in this regard. If governments do not cooperate, the Commission on Human Rights has a duty to examine why such situations arise and how they can be remedied. The Commission on Human Rights must ask itself whether it is merely an absence of political will on the part of Governments to change and improve which is the problem. If resolutions are tabled based on political and not human rights considerations, is a State obliged to cooperate ? By any estimate, the states who cooperate are far more than those who do not. Have their human rights situation automatically improved ? Would the Commission on Human Rights not be much more effective if it can channelise the collective strength of the international community towards such countries rather than engage in a futile exercise of trying to force those unwilling to cooperate due to whatever circumstances ? It must be also recognized that such coercion is beyond the capabilities of the Commission on Human Rights or the UN and the need is to help countries identify solutions and assist them with capacity building.

Alternate Recommendation 3 - Include the question of effective approaches for the promotion of human rights and international cooperation towards that end in the agenda of the above WG.

37. Para. 16 of the Bureau's report suggests the development of an appropriate strategy and a concrete action plan to secure the needed resources from the UN regular budget to ensure the effective implementation of the measures envisaged in this report. This suggestion must take the normal course of action by being discussed in the Fifth Committee in New York. In addition current constraints in the financial requirements for development programs (which have a direct link to the promotion and protection of human rights, including the decrease in the level of Official Development Assistance also needs to be kept in mind.

38. The Bureau has in its **Proposal 1** called upon the SG to develop an appropriate strategy and concrete action plan to secure in the next biennium, regular budget resources needed to ensure implementation of the measures in this report. It has also urged that any savings in conference servicing should be transferred to the Office of the High Commissioner for Human Rights' budget. It is premature to talk of resources to implement measures which have neither been discussed or agreed upon by the Commission on Human Rights. Moreover, the SG has given a clear assurance that any savings from anywhere in the UN system will go into development

activities. The Bureau's recommendation contradicts the SG's position. At any rate , the matter of more resources for the Office of the High Commissioner on Human Rights cannot be discussed without also discussing how there can be greater transparency in financial operations of the Office of the High Commissioner on Human Rights and how its current resources are being spent. It is essential that States examine whether the Office of the High Commissioner on Human Rights is treating all human rights as indivisible and whether there is a balanced allocation of staff and resources for the promotion of all rights. Similarly, the role of voluntary funds also deserves closer scrutiny. What is the nature of funding that different Special Rapporteurs get and is there any discrimination between them ?

Alternate Recommendation 4 - Include a review of the funding and expenditure of the Office of the High Commissioner on Human Rights as well as the balanced allocation of staff and resources within the agenda of the Working Group

39. In **Observation 4,** the Bureau has pointed to the need to ensure that the activities of its mechanisms represent a defensible and efficient use of scarce available resources. Its subsequent recommendations on the merging and elimination of mandates are however so timid that this view appears to have been forgotten.

Chapter II of the Report - Special Procedures

40. **Observation 5** of the Bureau describes the Special Procedures as one of the Commission's major achievements and reaffirms the Vienna Declaration and Program of Action's conclusion that the system should be preserved and strengthened and that States should cooperate fully with them. This is an acceptable proposition. However, these mechanisms cannot be imposed upon States and any attempt to do so would only be counter- productive. Going back to the Vienna Declaration and Program of Action, it must be noted that the language used in the above regard does not indicate anything mandatory ("All States are asked to fully cooperate".) The report should have reaffirmed the language of the Vienna Declaration and Program of Action.

Alternate Recommendation 5 - The Commission on Human Rights should reaffirm through a resolution or a decision the voluntary nature of cooperation with mechanisms .

41. Para. 19 of the Bureau's report refers to concerns regarding the proliferation of special procedure mandates and the consequent strains upon the Secretariat and States. While this concern must be addressed, it is important to keep in mind that this concern is being raised at a stage when creation of special procedures to look at various aspects of Civil and Political Rights is almost complete and a similar exercise has just begun in the field of Economic, Social and Cultural Rights.

42. **Recommendation 1** of the Bureau proposes a) merging the Special Rapporteurs on structural adjustment and foreign debt, b) converting the mandate on toxic wastes to human rights and environment, c) converting the Working Group on arbitrary detention into a Special Rapporteur, d) converting the Working Group on involuntary disappearances into a Special Rapporteur, e) terminating the mandate of Special Rapporteur on mercenaries and sending the issue to the sixth

committee and f) creating a new Special Rapporteur on contemporary forms of slavery instead of the Sub Commission's Working Group.

43. On one hand, the proposals target only mechanisms which have been initiated by developing countries. On the other hand, the large majority of country rapporteurs and thematic rapporteurs in the field of civil and political rights have been left untouched despite the fact there are clear cases of duplication. There are no recommendations whatsoever on how some of the Civil and Political Rights mandates can be merged or eliminated. For example, the Asian Group's suggestion of a merger of arbitrary execution with torture has not been taken into account. There are at present 16 country specific rapporteurs. The Bureau has not attempted at all to see if some of the mandates could be merged. For example, one Special Rapporteur could cover Chad, Equatorial Guinea and Somalia, while Rwanda, DROC, and Burundi could be covered by another person. Other candidates for merger could have been mandates relating to women and children and freedom of opinion and independence of judges. The independent expert on Internally Displaced Persons could have been done away with and OCHA asked to present reports to the Commission on Human Rights on the subject. Similarly, the Bureau should have also addressed issues such as the role of the Special Rapporteur on Torture vis a vis countries who have ratified the Convention Against Torture (CAT) or have submitted extensive reports on their national conditions and been subjected to scrutiny by the CAT.

44. The Bureau's recommendation that the mandates of the Special Rapporteur on Structural Adjustment and the Special Rapporteur on Foreign debt be merged will increase the existing imbalance between individual rights and collective rights, especially at a time when the international community is struggling to address the negative effects of globalization of the economy and the liberalization of trade and the different challenges resulting from their implementation. As for the mandate of the Special Rapporteur on Toxic Wastes, it should be kept untouched as there is a need to study the contradictions in the legislation of certain countries in relation to production and export of toxic waste.

Alternate Recommendation 6 - Include the issues raised in paras 44 and 45 above in the agenda for discussions in the Working Group

45. In **Observations 6 - 10**, the Bureau discusses country situations. To begin with, it makes a categorical assertion that the Commission on Human Rights must have an effective capability to adopt country specific measures. The Bureau goes on to make a qualified statement to the effect that such actions should *preferably be* on the basis of a consensus, *if possible* with the engagement of the country concerned. It further adds that no procedural device can guarantee a consensus.(No explanation has been given as to why the procedure cannot be amended). Finally it makes some references to the need for de - politicization, introspection and increased reliance on the reports of thematic mechanisms. It then expresses the view that the limited discussion till date does not provide a basis for concluding whether it would be *possible or appropriate to establish procedures that might complement, curtail or replace the prerogative of governments in initiating country specific proceedings*. It further adds that the Commission should give *more in depth consideration to this question in future.*

46. It is evident from the above that insufficient attention has been given to the L.2 and the spirit of consensus and constructive approaches, based on the principles of non-selectivity, dialogue

and cooperation which underpinned it. The Bureau has not gone into the substantive aspects of whether country specific resolutions work and whether such resolutions produce concrete results on the ground. To argue that countries which were confronted with such resolutions in the past consider it a good idea now is a very limited perspective. These are exceptional cases and issues of distrust and the North - South divide do not arise from such examples. Country resolutions and the entire agenda item on country situations must be seen in the larger context of the Commission on Human Rights and the impact that politicization as a result of these resolutions has on the entire work of the Commission on Human Rights. It is not one set of countries alone who have human rights problems. Such problems exist in all parts of the world. Does the Bureau's position imply that all countries should have resolutions moved against them and especially so in a situation where it is only one group of countries alone who selectively trigger such resolutions against others. At present resolutions against some countries are selectively triggered by a particular group of countries. It is also not clear why the Bureau has decided to qualify its calls for consensus instead of making it mandatory, particularly for country resolutions. In fact both the elements of consensus and the engagement of the countries concerned are the most important factors influencing the effectiveness of the Commission's actions. Since the entire process of the review of mechanisms commenced with the L.2 and now that the Bureau has chosen to leave this matter for the future, it is only legitimate that all other recommendations in the report be also kept pending till this issue is resolved.

47. An interesting measure proposed by the Bureau in the above regard to "reduce the adversarial atmosphere and politicization surrounding specific country situation" is to downplay the "regional or block interests or matters of north-south conflict." It should be noted that the practice of working through regional groups is widespread throughout the UN system. Far from contributing to an adversarial atmosphere, this principle reflects the realities of the international system. At any rate, developing countries are not the ones who have abused it.

48. Paras 23 and 24 of the Bureau's report call for greater recognition of the role of the thematic mechanisms as authoritative sources of information and analysis about violations of human rights in all parts of the world in a way which changes the nature of their mandate. This, however, might increase the politicization of the work of the Commission since it suggests an expansion of the mandate of the thematic procedures which enjoy no consensus at this stage. The Bureau's proposal that greater recognition be given to the role of the Commission's thematic mechanisms as authoritative sources of information and analysis about violations of human rights in all parts of the world needs to be viewed carefully. At best, any Special rapporteur's report is only an individual's assessment of any situation and cannot be considered as an authoritative source.

Alternate Recommendation 7 - Include an in- depth review of the country situations item within the agenda of the above Working Group. (b) All discussions on "country situations" should be held in confidential sessions. (c) Consideration shall be given to biennialise the examination of human rights situations in countries which are at present subject to annual resolutions if objective non-political elements justify it (d) The Bureau should provide arrangements for negotiations on country situation resolutions. The negotiations should be chaired by a member of the Bureau with the participation of the representative of the sponsors and the representative of the country concerned. (e) There should be periodical review of monitoring of country situations with a view to their termination, according to objective non-

political merits of each situation. (f) Ways and means of ensuring objective non-political criteria for the initiation and termination of country situation resolutions should be sought.

49. In **Observation 11**, the Bureau describes some general goals for the work of special procedures such as frank and genuine dialogue, identification of opportunities for sound advice, technical assistance to willing governments, objectivity and quality of fact-finding etc. However, it has completely overlooked the need to ensure that the OHCHR and the international community follow up on recommendations for technical cooperation. There is little point in criticizing the human records of states and advising them to initiate projects of technical cooperation, if the international community is not willing to back up such criticism and advice with the requisite transfer of resources to developing countries.

50. Although para 25 of the Bureau's report addresses the main features specifying the roles and tasks of the mechanisms, it fails to address some of the most important, and frequently raised concerns of many countries such as the need to ensure the respect of national legislation, avoid double standards, respect the universality and indivisibility of human rights, the need to consult with the country referred to in all matters before formulating any conclusions and the necessity to ensure the respect of national traditions, cultural and religious particularities.

Alternate Recommendation 8 - Include within the agenda of the above Working Group concrete ways and means to enhance resources for the technical cooperation program, including the allocation of a specific percentage within the OHCHR regular budget for this purpose.

51. In **Observation 12**, the Bureau has described the practice of issuing urgent appeals as a vital role of special procedures. Further, in **Recommendation 2**, it has said that the Chair of the Commission should play a role in assisting special procedures obtain responses to such urgent appeals. The ECOSOC rules of procedure which define the powers of the Chairman and the officers of the Commission in an exhaustive manner, do not make provision for any such substantive functions. The Chairman of the Commission on Human Rights and the Bureau, as provided for in the rules of procedure, have decision making powers only with regard to procedural matters. Such a move would only lead to further politicization and undermine the future functioning of all Chairpersons and the Bureau. It will result in a reduction of independence and credibility on the part of the Chairman and undermine his credibility as an impartial leader. It will further lead to an uncalled for expansion of the role and functions of the Bureau.

Comment 1 - Recommendation 2 of the Bureau should be rejected outright.

52. In **Observation 13**, The Bureau calls for mainstreaming of cross-cutting issues including women's rights, children's rights, etc. Para 27 however fails to mention the RTD, despite its centrality as one of the most important human rights issues that have a cross-cutting character.

53. In **Observation 14**, the Bureau outlines the qualifications and qualities which persons selected to perform the duties of special procedures should have. While it stresses independence, objectivity, etc. it has overlooked the matter of equitable geographical representation.

54. In **Recommendation 3,** the Bureau proposes that all appointments to special procedure posts be made by the Chair of the Commission, following consultations with the Commission's Bureau. This seems contrary to the need to ensure the wide acceptance of the special procedures. All such appointments should be made by the Bureau in consultation with the regional groups and not merely with the other members of the Bureau. This also includes giving full consideration to any objections by the concerned state. It is to be recalled states become members of the Bureau in their capacity as representatives of regional groups and not in their independent capacities.

Alternate Recommendation 9 - Bureau's recommendation 3 should be rejected and the CHR should adopt a procedural motion clarifying that all appointments should be made only with the approval of regional groups.

55. In **Proposal 2,** the Bureau asks the Office of the High Commissioner on Human Rights to develop and maintain a roster of persons possessing the necessary qualifications based on submissions by governments, NGOs, etc. The practice, in this regard, till date has been that States alone nominate candidates for positions of Special Rapporteurs. This Bureau has for the first time started accepting nominations from NGOs, OHCHR, etc. While such a practice has been adopted, the fact remains that it has no formal approval from the CHR or from the regional groups. It also needs to be mentioned that the OHCHR has never been transparent with regard to the rosters maintained by it for various appointments under the technical cooperation program etc.

Alternate Recommendation 10 - CHR should adopt a procedural motion clarifying that only states have a locus standi to nominate candidates and that the national of a State should not be appointed without its consent.

Alternate Recommendation 11 - OHCHR should be asked to issue letters to all States inviting nominations of candidates to form part of its roster and to publish on an annual basis a report containing an updated list of experts on all its rosters with their qualifications, nationality etc.

56. In **Recommendation 4,** the Bureau calls upon the ECOSOC to adopt a general decision authorizing an immediate provisional start to the implementation of all new mandates, recommends that the ECOSOC hold a special spring session to consider CHR proposals regarding special procedure mandates and that the regular May organizational session of ECOSOC include the consideration of CHR proposals. The Bureau is here clearly encroaching into the territory of ECOSOC. The impression that the Bureau gives is as though ECOSOC has only the Commission on Human Rights as its concern and no other subsidiary body. These issues are matters which have to be resolved by ECOSOC, based upon its own precedents and practice. It may not be possible for the CHR alone to be accorded special treatment.

Comment 2 - CHR has no role in the above matter which is purely within the mandate of ECOSOC to consider.

57. In **Recommendation 5,** the Bureau recommends continuing the practice of standard three-year terms for thematic mechanisms. It, however, proceeds to suggest that country specific mandates can be for more than one year on a case-by-case basis. This is a proposal which is very difficult to understand. There is no guarantee that the Commission will decide to extend the duration of country specific mandates year after year. To provide a longer period of time for country specific mechanisms would be to pre-empt the decision-making prerogative of the Commission on Human Rights.

Comment 3 - The second part of Bureau's Recommendation 5 should be rejected

58. The Bureau in **Recommendation 6** states that no particular individual should serve more than six years in a particular position. As a transitional measure, it suggests that office-holders who have served more than three years, be permitted to continue for another three years. At the same time, the Bureau also recommends that all such individuals *should be eligible for reassignment to other mandates*. While the first part of the Bureau's recommendation is welcome, it is difficult to understand why an individual who has already served six years should be eligible for reassignment to other mandates. Such a practice would only lead to a few individuals, who form part of the human rights industry reappearing again and again as different Special Rapporteurs.

Comment 4 - The first part of the Bureau's Recommendation 6 is welcome. Its second part should be rejected

59. **Observation 16** and **Proposal 3** of the Bureau's recommendation deal with the need to respect privileges and immunities accorded to holders of such posts. The Bureau calls upon the Secretary General to review UN practice in terms of granting Laissez-Passer. This issue of immunities appears to have been raised in the context of the Param Cumaraswamy case and any view in this regard can be adopted only on the basis of the final verdict of the International Court of Justice (ICJ). In this context, the precise nature of the privileges has yet to be decided upon by the ICJ. The Bureau has therefore, preempted the decision of the ICJ. Notwithstanding that, Special Rapporteurs are not employees of the UN. So, they cannot enjoy Laissez Passer. While States should respect privileges and immunities accorded to holders of mandate, it is also incumbent on the individuals to conduct themselves with dignity and in full respect for national legislation as well as national traditions, cultural and religious particularities.

Comment 5 - Bureau's Proposal 3 should be rejected

60. In Para 35, the Bureau has stressed the importance of special procedures upholding the integrity of their offices through the manner in which they discharge their responsibilities. It has said that a *code of conduct warrants careful consideration* and pointed out that the *special procedures themselves have expressed support for the idea*. However, in **Proposal 4**, it then goes on to ask the SG to expedite the work on preparation of such code of conduct. According to the Bureau, once such a code of conduct is established, allegations regarding infringement of the code by any office holder should be *examined by the annual meeting of special procedures and observations or recommendations reported to the Commission*.

61. The fact that the Bureau has accepted the idea of a code of conduct is most welcome. However, since the special procedures are the creations of the Commission, any such code must be prepared by the Commission itself and not the SG. The role of the SG is to facilitate the work of special procedures. The responsibility of determining what should be their conduct, whether any infringement has taken place and if so, what action needs to be initiated are all issues within the prerogative of the Commission. It is, therefore, imperative that work be recommenced on preparing such a code of conduct for all special procedures, using the draft resolutions L.86 and L.87 of two years back as the first draft for the same.

Alternate Recommendation 12 - Proposal 4 should be rejected. Commission on Human Rights should determine the code of conduct and evaluate the performance of the mechanisms. The draft resolutions L.86-87 of 1997 should be revived.

62. In **Proposal 5**, the Bureau has asked the Office of the High Commissioner for Human Rights to provide effective and efficient administrative support and *full and timely recompense* for all direct expenses in connection with the fulfillment of their duties. It has also asked that consideration be given to the feasibility of granting such office holders $1 per year UN staff status. The full import of this proposal is not clear. What does such UN staff status imply, why should *direct expenses* be repaid and what is the financial implication of such a decision? Who would determine what are the expenses which can be repaid ? Can such issues not be resolved through Programme Budgetary Information(PBI)? All these are issues which need to be clarified. There should be harmonization between the support and expenditures that each mechanism gets. Some mechanisms are generously treated while others are starved of resources. Whether or not direct expenses are compensated for, there should be uniformity in the financial and human support given to each mechanism.

Comment 6 - Proposal 5 should be rejected as impractical and un - implementable

63. In **Observation 16**, the Bureau has stressed the need for special procedures to be able to work effectively with governments, NGOs, etc. It has commended the effort of the Office of the High Commissioner for Human Rights and special procedures in developing a manual and asked for continuing the development of 'best practices'. While there can be no objection in principle to the development of a manual such as above, this is also an issue closely related to the Code of Conduct as well to the issue of the approaches for the promotion of human rights. The Office of the High Commissioner for Human Rights and special procedures cannot on their own develop a manual. The contents of any such manual should be subject to intergovernmental scrutiny.

Alternate Recommendation 13 - The Commission on Human Rights should determine what goes into the Manual referred to in Observation 16.

65.The Bureau in **Observation 17** expresses the need for grassroots awareness of the workings of special procedures; the need to ensure that groups or individuals providing information to special procedures do not suffer reprisals, the need to provide acknowledgments and progress reports to persons submitting communications, etc. It has pointed out at the same time that it is incumbent on special procedures to *take every possible step and observe all appropriate principles and practices to verify the reliability of all information brought to their attention.* The last part of this observation is extremely important from our perspective and forms part of the

Asian Group recommendations. The Bureau, however, has tucked this away in an obscure corner and not given it the prominence that it deserves. Moreover, the entire report contains no substantive consideration of the role played by NGOs and whether the time has not come for their participation and involvement to be fine-tuned.

Alternate Recommendation 14 - Ways and means of fine tuning NGO participation so as to improve the efficiency of the Commission on Human Rights and Sub Commission sessions should be comprehensively discussed and amendments , as required, proposed to the ECOSOC procedures on NGO accreditation and participation.

66. **Observations 18 & 19** deal with the cooperation of governments with mechanisms. According to the Bureau, States should assure an invitation to any and all mechanisms that demonstrate a reasonably substantiated interest in conducting a direct mission. It has also called upon governments to respect the basic terms of reference for direct missions. This is an effort to convert a voluntary action into an obligatory or mandatory duty. The Bureau has, in fact, even referred to "sanctions" in cases where cooperation is not forthcoming. Accepting the need for cooperation on the part of states, it must be kep in mind that such cooperation is a voluntary action and not a mandatory duty. To argue otherwise would be to misrepresent both the Vienna Declaration and Programme of Action and the UN Charter on their interpretation of international cooperation.

Alternate Recommendation 15 - The Commission on Human Rights should determine the contents of the "basic terms of reference" mentioned in Observations 18 & 19.

67. **Recommendation** 7 is a direct follow-up to the above observations. The Bureau has suggested that at each session of the Commission there should be regular, focused and systematic deliberations of serious incidents or situations involving a failure or denial of cooperation by governments with the Commission or its mechanisms. This recommendation is tantamount to creating a new agenda item on country situations since a determination of which country is cooperating or not cooperating will be done only on political terms. Many countries which are subject to country resolutions reject Special Rapporteurs appointed under these resolutions because they perceive the resolutions as politically motivated. If the above proposal comes into effect, such countries would be pilloried first under the agenda item on country resolutions and then during the above discussion for their refusal to permit the Special Rapporteurs concerned visit their countries. This proposal will not lead to better cooperation but more politicization and confrontation. The proposition of discussing each case of "non-cooperation" is a presumption of guilt and contradicts the voluntary nature of cooperation. True cooperation through genuine dialogue cannot mean condemning a state for legitimately having different views from those held by the mechanisms.

Comment 7 - Bureau's recommendation 7 should be rejected

68. The Bureau in **Observation 20** states that *whenever possible*, governments should be given a reasonable opportunity to review the reports of special procedures prior to their finalization and to provide comments/clarifications. It states that any such input should be made available to the Commission in the form of an addendum to the report where the Government concerned *so wishes and time permits*. Here the Bureau has taken up a recommendation of the

Asian Group. However, instead of making the above procedure mandatory, it has left it to the discretion of the Special Procedure/ Secretariat by using the words *wherever possible*.

Alternate Recommendation 16 - Bureau's Observation 20 should be made a mandatory practice

69. **Observation 21** deals with the continued holding of annual meetings of special procedures and the need to have better coordination amongst the special procedures and with other components of the UN. One of the biggest burdens which States face today is repeated communications on the same subjects coming from different mechanisms. The Office of the High Commissioner for Human Rights has till date not been able to coordinate this process. The Bureau has completely ignored the fundamental issue of duplication of communications received from special procedures and under the 1503 procedure. Moreover , while annual meetings of special procedures might be a useful exercise, it is also a matter of concern that such meetings are held in camera and States have little knowledge of the discussions that take place or the views which are expressed by individual special rapporteurs. In the interest of transparency and openness, all such meetings should be fully open to any State which might be interested in observing the meeting.

70. Para. 44 of the Bureau's report fails to justify the use and foundation of such extreme expansion of the exchange of information and coordination of activities among the Commission's special procedures and "other relevant components of the UN and other International Institutions", especially at a time when financial constraints negatively affect the current situation in the field of human rights. The only objective which logically can be envisaged by such expansion, which is not accepted by many countries, is the creation and introduction of new conditionalities in the wider spectrum of international cooperation under the pretext of protecting human rights.

Alternate Recommendation 17 - Coordination of communications should be the principal issue on the agenda of the above meetings of Special Rapporteurs. All such meetings should be open to Governments.

71. **Observation 22** calls for the development of a strategy to secure and administer regular budgetary resources for the mechanisms. **Proposal 6** calls for an effective system of annual work planning and use of modern technologies etc. **Observation 23** underlines the importance of continuing and enhancing coordination between the Special Procedures and substantive activities of the High Commissioner. While all the above suggestions are welcome, the Bureau has once again overlooked a critical issue of considerable concern to developing countries namely, the issue of a balanced allocation of staff and resources to all elements of the human rights program and in particular Economic, Social and Cultural Rights (ESCR), Right to Development (RTD) and technical cooperation. At present, there is very little transparency with regard to how the resources available to the Office of the High Commissioner for Human Rights are being spent and what amounts are being allocated for ESCR, RTD etc. Before any strategy for increasing resources is evolved, there should first be transparency with regard to the funding that exists at present, including voluntary funds. Further, there should be a clear commitment to enhance resources for the hitherto neglected aspects of the human rights program such as RTD before support is sought for a strategy to raise overall budgetary resources.

72. **Recommendation 8** deals with preparation and circulation of reports. It calls for advance, unedited versions of Commission on Human Rights reports to be made available to all delegations as soon as they are submitted to the Office of the High Commissioner for Human Rights. It asks for all reports to include an executive summary which will focus *on the recommendations in the report and on the question of cooperation of governments with the mechanisms*. All such executive summaries should be separately compiled and once again this compilation should have a *separate chapter regarding serious incidents of denial of cooperation with the Commission or its mechanisms*. It recommends that mechanisms should be also permitted to *present updates and reports addressing urgent developments* and that they should be *brought to the Bureau's attention.*

73. This recommendation seems to have been made with the purpose of trying to enforce the cooperation of states with mechanisms. While executive summaries by themselves are welcome, the attempt to focus them on so-called non-cooperating states appears to be an invitation to the special procedures to specifically target some countries. This will only undermine the integrity and credibility of the procedures. As mentioned earlier, adoption of this proposal would only lead to the creation of another country situations item and politicize the work of the Commission further. Furthermore, it sounds illogical at a time of too many reports to ask for one more report which compiles all executive summaries together. We note again that such a trend would create for the Bureau a substantive role which exceeds their mandate. In fact what is completely lacking in such a simplistic or mechanical monitoring driven system is the recognition that compliance depends upon an objective assessment of the national context. Do these reports refer to States where the rule of law prevails and where there exist ample domestic remedies or are we assessing the reliability of NGO reports? If these factors are not taken into account the conclusions drawn are almost certain to be misplaced or erroneous.

Comment 8 - Bureau's Recommendation 8 should be rejected as superfluous and duplicative

74. **Recommendation 9** also flows from the previous recommendations. Here the Bureau suggests that *the executive summaries be used as the principal basis* for organizing a discussion on the *observations and recommendations of each mechanism, the extent to which past recommendations have been implemented, concerns about the degree of cooperation including requests to visit countries*, etc. It says that the governments concerned should be encouraged and offered every opportunity to explain its position and that a dialogue such as the above should be commenced at the forthcoming session of the Commission on Human Rights.

75. In effect, the proposal provides for a system by which a large number of countries will be put in the dock - first for not inviting mechanisms and then, if they have invited, for not implementing recommendations etc. This would result in the complete transformation of these discussions into another country situations debate and makes the Commission on Human Rights into an inquisition chamber where governments would be called to the dock and asked to explain. Moreover, the Bureau has not said anything about where the time will come for such a debate and it is possible that such a measure will then be used as an excuse for further increasing the period of the Commission on Human Rights.

Comment 9 - Bureau's Recommendation 9 should be rejected as superfluous and duplicative

76. In **Recommendation 10,** the Bureau calls for a new document to be prepared by the Office of the High Commissioner for Human Rights in September of every year which summarizes the progress realized and steps taken in connection with the recommendations of the mechanisms for the Bureau to review in advance of the human rights debate in the GA . The Bureau would then consider what appropriate steps it should take or advice it may offer to concerned parties regarding follow up. The Bureau would hold private dialogues with concerned states and then it would conduct a public briefing for representatives of all Commission members on any observations or conclusions it may consider appropriate to report. These ideas are highly objectionable. The concept of a single document prepared by the Office of the High Commissioner on Human Rights in collaboration with the special procedures in September each year to be reviewed by the Bureau gives: (a) the Bureau a monitoring and censuring role; and (b) also gives the Secretariat a role which is not acceptable. Obviously, this is an attempt to make the Bureau into a superior monitoring body or a judge. This does not only exceed the Bureau's legal competence but would exacerbate political confrontation. No such role has been envisaged for the Bureau nor can any such role be acceptable. The secretariat has no locus standi passing value judgments on whether states have implemented recommendations or not, and to have them do so, would impugn their non-political and impartial character. This is a task only the special procedures themselves can perform. Similarly, the Bureau has no locus standi sitting in judgment over states let alone conducting private meetings on follow up or public meetings to draw conclusions.

Comment 10 - Bureau's Recommendation 10 should be rejected as superfluous, duplicative and a threat to the credibility and impartiality of the Bureau

77. **Observation 24** calls for the results of the work of special procedures to be disseminated to *UN development and other agencies* that might be in a position to take advantage of recommendations for technical cooperation or *to other components of the UN* and to NGOs etc. This observation raises inter alia the fear that these recommendations will be sought to be used by agencies and donors as conditionalities for development assistance. It also raises concerns about the ambiguities and potential abuses of the concept of human rights. It is also interesting to note that the responsibility for technical cooperation is being sought to be passed onto other agencies and the Office of the High Commissioner for Human Rights is completely excluded from this task.

78. Para. 50 of the Bureau's report introduces new prerogatives and privileges to the civil society in monitoring the respect of members states of their obligations in the field of human rights which are not included even in the Declaration on Human Rights Defenders. Contacting "interested groups and individuals" within States is a wide open door for mutually confrontational accusations which cannot help the cause of human rights. It should be reiterated that monitoring based exclusively on reports of NGOs and taken as "evidence" does little to promote human rights.

Comment 11 - Bureau's Observation 24 should be rejected. The primary role of the Office of the High Commissioner for Human Rights in technical cooperation should be emphasized.

Chapter III - 1503 procedure

79. Para 52 of the Bureau's report highlights what it considers to be the deficiencies in the 1503 procedure. It states that the procedure is ineffectual, complex and highly cumbersome. Two aspects which the Bureau leaves out, however, is the fact that the procedure was initiated in the late sixties at a time when none of the other mechanisms existed. As of now, the 1503 procedure leads to duplication within the system. This has not been, however, recognized by the Bureau.

80. After identifying the problems which plague the system , the Bureau concludes in **Observation 25** that this procedure continues to provide an important channel of redress. The two justifications it provides for arriving at this conclusion are a) that countries not parties to treaty based communications procedures and vulnerable groups who otherwise have difficulty in securing access to human rights institutions find this useful and b) there is value in maintaining the confidential process insofar as this helps secure constructive engagement by Governments concerned.

81. First of all, countries , irrespective of whether they are parties to the optional protocols or not, come within the ambit of Special Procedures such as torture, disappearances etc. They receive communications from these procedures and respond to them. Similarly, the Special Procedures receive communications in exactly the same manner as that of the 1503 procedure. Anyone can write an ordinary letter complaining of human rights violations and if the Special Procedure deems it worthy of referring to the Government concerned, they do so. In fact, the critical difference is that while under 1503 procedure almost every letter, including crank letters are sent to Governments by the Secretariat without any weeding out, Special Procedures, at least to some extent, apply their minds with regard to whether the communications should be referred or not. Finally, as far as the value of confidentiality is concerned, the views expressed by the Bureau are relevant. It is due to the confidential nature of the procedure that it continues to receive the highest percentage of responses. However, what is required is not a duplication of the public procedure on country situations within the confidential procedure but the conversion of the public 'Country Situations' debate into a confidential one. Such a move, even on an experimental basis, might facilitate constructive engagement and genuine dialogue instead of the current confrontation and acrimony.

82. **Recommendation 11** of the Bureau proposes an alternate 1503 procedure which involves the creation of a new body of five independent experts appointed by the Chairman. However, no reasons have been provided as to why the current arrangement of five Sub Commission members sitting as a Working Group on Communications is incapable of doing the job. According to the Bureau, the new body will meet first in September to look at communications and any *Government replies received to date* (implying thereby that the present practice of sending communications to states without a proper examination of whether they meet the proper criteria will continue) . It will decide which communications should be referred to states for clarification. It will then meet again in January to examine once again the communication, replies from governments, *and any additional relevant information from other UN sources, including treaty bodies and Special Procedures.* (implying thereby that the communication will be referred to all these other sources, subverting thereby the confidentiality of the whole exercise). This body will then decide what situations will be referred to the Commission and also *identify main issues of*

concern as well as suggested ways of addressing these concerns. In effect, a new body of independent experts who have no mandate under international law, will sit in judgment over countries who are not under any treaty obligation to submit themselves to any such scrutiny. In addition, instead of electing the experts responsible for examining the situations, it is suggested that the Chairman of the Commission appoints the new body consisting of 5 experts, which in itself is a setback to the process of ensuring that the review of the mechanisms is done through a more democratic process involving all geographical groups.

83. Then, there is the second stage of the exercise. Here the Commission on Human Rights will first meet in the beginning of the session for a *meaningful dialogue* and then at the end of the Commission, once again to decide on *appropriate action, including whether the matter should be taken up in public procedure,* which according to the Bureau should be *the principal option* in cases where the government's cooperation has been inadequate. It appears, therefore, that the proposal aims at bolstering and strengthening the discussions on country situations.

84. What is also interesting in the above regard is that the Bureau goes on to stress the important role of the Office of the High Commissioner on Human Rights *in referring communications to governments and in sifting out communications that appear to be manifestly unfounded.* The biggest problem States have repeatedly pointed out is the difficulty the Secretariat faces in performing this task efficiently. Surely, to restructure the whole 1503 process and then at the end of it all, to ask the Secretariat to weed out manifestly unfounded cases is not the answer to any problem.

85. The end result of the Bureau's efforts is to substitute a two level screening process for the current four level screening process. Considering all the infirmities that we know exist within the process, this could be dangerous and will lead to exactly what the Bureau is supposedly trying to avoid , namely *situations that hardly deserve the attention of the Commission on Human Rights reaching that level with disproportionate consequences for Governments and negative implications for the credibility of the Commission on Human Rights.* What now happens over one to two years will now take place within a span of six months, a period hardly adequate for most countries to even obtain factual responses from the grassroots.

86. In conclusion, the best option is to retain the status quo with a small change in the present system by which the present Working Group on Communications meets twice a year, first to decide what should be referred to States and the second time to decide what should be referred to the Sub Commission.

87. In the above regard, it must be also mentioned that fairness demands that at each stage of the 1503 process when a situation is referred from one body to another, the country concerned should be informed by the body clearly of the reasons why the situation is being referred and provided with a detailed questionnaire on the additional information and clarifications that the concerned government is expected to provide. Adopting such a practice will ensure a more genuine and fruitful dialogue with the country concerned.

Alternate Recommendation 18 - Status quo should be retained on the 1503 procedure with provision for the Working Group on Communications to meet twice every year.

Chapter IV - Sub Commission

88. In **Observation 27,** the Bureau states that "incremental efforts at improving the Sub Commission's working methods do not appear to have resolved some very fundamental concerns about this institution and the Bureau agrees that fundamental reform measures must be considered". It then goes on to say that the Sub Commission is the most expensive of all the Commission on Human Rights mechanisms and that its cost is more than that of the Commission on Human Rights itself. The Bureau also comments that it is difficult to discern the unique and specific value added role that the Sub Commission plays, that its focus is diffused, there is overlapping with the Commission on Human Rights, there is a proliferation of projects and that its working methods are politicized and resemble that of the Commission on Human Rights rather than a body of independent experts. It is evident from these comments that the Sub Commission's efforts towards reforms have been completely ignored. The important role that the Sub Commission is playing in the field of ESC rights through studies such as income distribution, right of food, etc, its study on terrorism, work in the field of minorities, rights of the indigenous etc. also find no mention.

89. **Recommendation 12** of the Bureau proposes that the Sub Commission be renamed; the membership be reduced to 15 persons nominated by the Chairman of the Commission on Human Rights in consultation with the Bureau (yet another instance of efforts to expand the role of the Chairman and Bureau at the expense of the CHR general membership and regional groups); each expert serve a maximum of two four year terms; members should not be concurrently employed in the executive branch of the Government and that the length of the session be reduced to two weeks. It says that the Sub Commission should focus on the elaboration of studies, research and expert advice. It should submit analytical reports and not negotiate resolutions. It should dedicate adequate time to private deliberations. It should continue to conduct an annual debate on human rights violations in all parts of the world and this debate should be submitted in a summary to the Commission on Human Rights as part of the Sub Commission's annual report. The Sub Commission's Working Group's on minorities and indigenous populations should continue, the latter until such time the issue of a Permanent Forum for indigenous issues is resolved. Finally, the Bureau recommends that these reforms be effected by the 56th session in 2000 AD.

90. The biggest concern with regard to the Sub Commission expressed by a large number of countries in the past has been its action with regard to country situations. The Bureau's recommendations in this regard are good and welcome in so far as it proposes a complete abolition of the practice of passing all resolutions, including country resolutions and a reaffirmation of the Sub Commission's "think tank" role. The Bureau however, recommends a retention of the country situations debate and suggests that a summary be forwarded to the Commission on Human Rights, despite the fact that the main area of duplication between the Sub Commission and Commission on Human Rights in the Country Sitatuions debate. In fact, this debate is also the main cause of politicization of the Sub Commission.

91. As regards, reducing the length of annual sessions of the Sub-Commission it should be pointed out that any such exercise must be dependent on the program of work and agenda of the annual sessions, not on arbitrary guidelines. Flexibility in this respect will be more conducive to

the preservation of the relevance of the Sub-Commission. It also needs to be pointed out that the the Bureau's suggestion for reducing the expert members of the Sub-Commission would have a negative impact on the geographical representation of the Sub-Commission and would undermine the need for more inputs of experts from developing countries. Considering the fact that part of the Sub-Commission's functions as a think tank is to promote a dialogue between different cultures, the more logical step is to increase the number of experts from developing countries not reduce them. Such a move would help better reflect the rich, cultural, religious and civlizational diversities of the world.

92. Yet another problem in the recommendation is the attempt to change a democratic procedure of direct election by members of the Commission on Human Rights for a non-democratic procedure of nomination by the Chair. This is clearly unacceptable. Unlike the Special Rapporteurs, members of the Sub-Commission are directly elected by the Commission and have a right to be in the Sub-Commission as long as they continue to enjoy the confidence of the Commission. This also applies to the matter of Sub-Commission members holding office in the executive branch of the Government etc.

93. The Sub Commission has been improving its methods of work and is undertaking important studies in the field of Economic, Social and Cultural Rights, terrorism, etc. It is our view that there is no reason whatsoever to proceed in such haste to a virtual dismantlement of the entire body.

Alternate Recommendation 19 - Bureau's recommendation 12 should be accepted without changing election procedure, the size of the body or reducing the session. The proposal to forward a compilation of debates in the Sub-Commission to the Commission on Human Rights should be rejected and the Sub Commission's debate on country situations should be completely abolished .

Chapter V - Standard setting working groups

94. **Recommendation 13** of the Bureau proposes that the Commission on Human Rights should ask the Sub Commission to prepare a draft text before initiating any new standard setting exercise, that it should agree on a specific time frame of not more than five years for any exercise , provide for breaks of a year or two if there is no progress and that all chairpersons be given a standing mandate to conduct inter sessional informal consultations. It also states that *there is no rule of procedure requiring the Commission on Human Rights, ECOSOC or General Assembly to adopt standard setting instruments by consensus and there are examples where consensus has not been achieved.* In fact, this position appears to clearly violate the spirit of the GA resolution which has been cited in the report itself. There is a need to avoid any arbitrary or specific time-frame within which working group would be called upon to complete its task. Moreover, consensus should remain the most fundamental and ultimate objective of any legislative exercise. This is a precondition for any achievement to be universal, widely implemented and respected in the field of human rights. It is regrettable that the report of the Bureau suggests the contrary.

Alternate Recommendation 20 - Amend rules of procedure to make clear that standard setting working groups must work on the basis of consensus.

Vision for the future :

95. The turn of the century is an appropriate time to discard the cold-war mentality and further reflect on what should be the guiding principles of our future work in the field of human rights for the sake of its better protection and promotion. In doing so, our effort must be to contribute to the establishment of a new and just international, political and economic world order based on the rule of the law and principles of the UN Charter.

96. Equality and mutual respect must remain the guiding principles of international relations as well as the basis for the future work of the Commission on Human Rights, especially in its decision making and consultative process.

97. Human rights should be the ideal of all mankind and should be realized through international cooperation and on the basis of equality. It should not be used as an instrument for interference in the internal affairs of states or for political gains. The improvement of the situation of human rights and its full enjoyment is a long process. No country is exempt from this obligation.

98. All human rights are universal, indivisible and interdependent. The international community should treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.

99. The significance of national and regional particularities and various historical, cultural and religious backgrounds must be respected. This is essential to ensure the cultural legitimacy of solutions offered for human rights problems.

100. According to the purposes and principles of the Charter of the United Nations, international cooperation should be paramount in solving problems of an economic, social, cultural or humanitarian nature, and in promoting and encouraging respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language or religion. Therefore, the best way to promote and protect human rights is dialogue and cooperation rather than confrontation.

101. All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. Therefore, when promoting and protecting human rights, states have the right to decide on their own ways and means of implementation and priorities in accordance with the principles and purposes of the UN Charter and international law and where relevant, in the light of their national situations.

102. Working on the premises as contained in paras 100-106 above, this vision is based on the fact that promoting and protecting human rights involves two levels of action to convert human rights aspirations into reality:

- the promotion of international standards and mechanisms as well as national laws.
- the creation of a conducive socio-economic environment, internationally and nationally.

103. This paper believes that an approach which does not address fully both levels of action is necessarily incomplete especially since the second level is often overlooked. The delegations presenting this paper are of the view that the following proposals are the constituent elements of a vision for the future.

a. A need to ensure the full and effective implementation of the Vienna Declaration and Program of Action.

b. A need to strike a balance between collective rights and individual rights. The success of the review of the mechanisms can best be judged by achieving such a balance through concrete proposals such as assigning equal budgetary and human resources, to both civil and political as well as economic, social and cultural rights.

c. "Mainstreaming human rights" within the UN system is not an agreed objective because it is undefined and can easily justify abuses, conditionalities and controversies on priorities. Even if it was agreed, for the sake of argument, it requires an introductory phase in which particular rights could be mainstreamed. For many in the developing countries, Right to Development, by virtue of its encompassing all other rights as well as being a right in itself, is by far the most important right to be mainstreamed. What is therefore required is a developmental approach to human rights, keeping in mind that all human rights are indivisible and the need for adequate importance to be given to ESC rights. The "rights" based approach to development undermines human rights by creating conditionalities to "development" which is itself a basic human right.

d. The negative effects of globalization and trade liberalization greatly affects human rights and their enjoyment. These negative effects are only likely to increase along with the future development of globalization. A Commission on Human Rights equally and sincerely concerned with all rights for all peoples, cannot overrule or underestimate such a crucial fact. A separate agenda item on globalization and its impact on the full enjoyment of all human rights should, therefore, be created in Commission on Human Rights.

e. There is a need to ensure the respect of the cultural specificities in order to create a better and more fruitful dialogue and cooperation in the field of human rights. This dimension should be addressed by practical steps and concrete proposals within the exercise of the review of mechanisms in the context of, inter alia, field operations and technical cooperation.

f. There should be a consistent standard setting policy, both legally and otherwise, in approaching similar issues. States should adopt consistent positions in all standard setting exercises and avoid contradictions.

g. The review of the mechanisms is an occasion to balance the closely linked concepts of rights and responsibilities.

h. Civil society, especially NGOs, has an increasingly important role to play in the field of human rights. Therefore, there is a need to first and foremost devote more attention and study to their functioning and activities. Secondly, there is a need to develop a "Code of Conduct" for NGOs on the model of similar efforts in the humanitarian field, addressing matters such as transparency of their financing, authenticity of their objectives and the respect of their roles and mandates. Thirdly, there should be a mechanism to ensure adherence to the proposed "Code of Conduct".

i. There is a need to ensure and guarantee Official Development Assistance (ODA). Mainstreaming development this way is the only direct and credible approach to promote and protect human rights.

j. There is also a need to ensure that technical cooperation and assistance to developing countries are mainstreamed throughout the human rights system and all aspects of human rights activities carried out by the UN contain in-built programs of technical cooperation and advisory services.

k. The Committee on Economic, Social and Cultural Rights has stated in a General Comment that sanctions imposed on certain countries have negative effects on the enjoyment of human rights by their populations. This General Comment requires follow-up to ensure the full enjoyment of basic human rights of the populations of the countries concerned. In this connection, non-human rights related objectives, such as promotion of strategic, political, economic, trade or other vested interests is a concept which needs to be addressed, defined and avoided in order to ensure the depoliticization and non-selectivity in the field of human rights.

l. Further efforts to develop dialogue and cooperation in the field of human rights should be continously undertaken.

m. The role of terrorists is becoming more alarming and it directly affects the respect of human rights. It therefore needs equal attention and study. The classical view of human rights which stipulates that only the State can violate human rights is outdated and must be reviewed in the context of modern day realities.

n. The rule of consensus is the pre-requisite for attaining universal human rights. What can and should be discussed is criteria to avoid its potential abuse, but not, as suggested by the report of the Bureau, the rule of consensus itself.

o. Respect for human rights cannot be imposed by external pressures. Solutions which emerge from within societies and are adapted to their respective circumstances can alone succeed. In this context, emphasis must be placed on national legislation and

national institutions in order to ensure the development of a deeply rooted human rights culture within different societies.

p. Field operations of the OHCHR, as currently structured, are of questionable value. Any field operation should be undertaken only in exceptional circumstances after adequate justification of the circumstances has been provided and following a clear inter-governmental mandate. The primary focus of all such operations should be to build national capacities and enable the country concerned to stand on its own feet at the earliest. Emphasis in this regard must be given to the maximum utilization of appropriate expertise available in developing countries.

q. Field operations which have been established with the primary objective of monitoring should be converted into technical cooperation projects as rapidly as possible and all international monitoring should be replaced by national institutions. A clear policy in the above regard should be developed and implemented by the OHCHR in close consultation with States and submitted to the CHR for its approval.

r. In order to ensure the objectivity and impartiality of human rights activities, the OHCHR should not enter into agreements with governments or their subsidiary bodies without a formal approval of inter-governmental bodies. This applies especially to agreements that involve the OHCHR working together and coordinating the use of resources and personnel with such governments or bodies for the objective of, inter alia, establishment of stable governments, prevention of ethnic conflicts etc.

s. It is important that voluntary financial contributions to the activities of the OHCHR do not in any way skew priorities set by inter-governmental bodies and aggravate existing imbalances between rights based on donor priorities.

t. Further efforts are required to improve protection for the human rights minorities as well as migrant populations in all countries on the basis of minimal common standards.

.....

Annexure

Compilation of Recommendations

- *Alternate Recommendation 1 - Establish an open ended Working Group of States to discuss L2, L105 issues, the Burau's report and proposals submitted by individual delegations.*

- *Alternate Recommendation 2 - Include the establishment of a balanced human rights program in the agenda of the above Working Group.*

- *Alternate Recommendation 3 - Include the question of effective approaches for the promotion of human rights and international cooperation towards that end in the agenda of the above WG.*

- *Alternate Recommendation 4 - Include a review of the funding and expenditure of the Office of the High Commissioner for Human Rights as well as the balanced allocation of staff and resources within the agenda of the Working Group.*

- *Alternate Recommendation 5 - The Commission on Human Rights should reaffirm through a resolution or a decision the voluntary nature of cooperation of States with mechanisms .*

- *Alternate Recommendation 6 - Include the issues in paras.42 and 45 of the report in the agenda for discussions of the above Working Group.*

- *Alternate Recommendation 7 – (a) include an in- depth review of the country situations item within the agenda of the Working Group; (b) all discussions on "country situations" under this item should be held in confidential sessions; (c) Consideration shall be given to biennialise the examination of human rights situations in countries which are at present subject to annual resolutions if objective non-political elements justify it; (d) the Bureau should provide arrangements for negotiations on country situation resolutions. The negotiations should be chaired by a member of the Bureau with the participation of the representative of the sponsors and the representative of the country concerned; (e) there should be periodical review of monitoring of country situations with a view to heir termination, according to objective non-political merits of each situation; (f) ways and means of ensuring objective non-political criteria for the initiation and termination of country situation resolutions should be sought.*

- *Alternate Recommendation 8 - Include within the agenda of the above WG concrete ways and means to enhance resources for the technical cooperation program, including the allocation of specific percentages within the OHCHRs' regular budget for this purpose .*

- *Alternate Recommendation 9 - Bureau's recommendations 3 should be rejected and the Commission on Human Rights should adopt a procedural motion clarifying that all appointments should be made only with the approval of regional groups*

- *Alternate Recommendation 10 – The Commission on Human Rights should adopt a procedural motion clarifying that only States have a locus standi to nominate candidates and that the national of a State should not be appointed without its consent.*

- *Alternate Recommendation 11 – The Office of the High Commissioner for Human Rights should be asked to issue letters to all states inviting nominations of candidates to form part of its roster and to publish on an annual basis a report containing an updated list of experts on all its rosters with their qualifications, nationality etc.*

- *Alternate Recommendation 12 - Proposal 4 should be rejected. The Commission on Human Rights should determine the code of conduct and evaluate the performance of the mechanisms. The draft resolutions L.86-87 of 1997 should be revived.*

- *Alternate Recommendation 13 - Commission on Human Rights should determine what goes into the Manual referred to in Observation 16.*

- *Alternate Recommendation 14 - Ways and means of fine tuning NGO participation so as to improve the efficiency of the Commission on Human Rights and Sub Commission sessions should be comprehensively discussed and amendments , as required, proposed to the ECOSOC procedures on NGO accreditation and participation.*

- *Alternate Recommendation 15 – The Commission on Human Rights should determine the contents of the "basic terms of reference" mentioned in Observations 18 & 19.*

- *Alternate Recommendation 16 - Bureau's Observation 20 should be made a mandatory practice*

- *Alternate Recommendation 17 - Coordination of communications should be the principal issue on the agenda of the meetings of Special Procedures. All such meetings should be open to Governments.*

- *Alternate Recommendation 18 - Status quo should be retained on the 1503 procedure with provision for the Working Group on Communications to meet twice every year,*

- *Alternate Recommendation 19 - Bureau's recommendation 12 should be accepted without changing election procedure, the size of the body or reducing the session. The proposal to forward a compilation of debates in the Sub-Commission to the Commission on Human Rights should be rejected and the Sub Commission's debate on country situations should be completely abolished*

- *Alternate Recommendation 20 - Amend rules of procedure to make clear that standard setting working groups must work on the basis of consensus*

- *Comment 1 - Recommendation 2 of the Bureau should be rejected outright.*
- *Comment 2 - Recommendation 4 of the report is within the mandate of ECOSOC and not within the competence of the Commission on Human Rights*
- *Comment 3 - The second part of Bureau's Recommendation 5 should be rejected*
- *Comment 4 - The second part of Bureau's Recommendation 6 should be rejected*
- *Comment 5 - Bureau's Proposal 3 should be rejected*
- *Comment 6 - Proposal 5 should be rejected as impractical and un-implementable*
- *Comment 7 - Bureau's recommendation 7 should be rejected*
- *Comment 8 - Bureau's Recommendation 8 should be rejected as superfluous and duplicative*
- *Comment 9 - Bureau's Recommendation 9 should be rejected as superfluous and duplicative*
- *Comment 10 - Bureau's Recommendation 10 should be rejected as superfluous, duplicative and a threat to the credibility and impartiality of the Bureau*
- *Comment 11 - Bureau's Observation 24 should be rejected. The primary role of the Office of the High Commissioner for Human Rights in technical cooperation should be emphasized.*

Vision for the Future

a. *Full and effective implementation of the Vienna Declaration and Program of Action.*

b. *Need to strike a balance between collective and individual rights- civil and political as well as economic, social and cultural rights.*

c. *Mainstreaming the Right to Development .*

d. *Examining how the negative effects of globalization and trade liberalization affect human rights and their enjoyment.*

e. *Need to respect cultural specificities in order to establish a genuine and fruitful dialogue and cooperation in the field of human rights.*

f. *Evolving a consistent policy towards standard setting.*

g. *Balancing rights with responsibilities.*

h. *Developing a "Code of Conduct" for the civil society on the model of similar efforts in the humanitarian field.*

i. *Ensuring and guaranteeing official development assistance and technical cooperation to developing countries in the field of human rights.*

j. *Mainstreaming of technical cooperation and assistance to developing countries throughout the human rights system.*

k. *Ensure depoliticization and non-selectivity in the field of human rights by addressing non-human rights related objectives.*

l. *Developing further dialogue and cooperation in the field of human rights.*

m. *Greater examination of the relationship between terrorism and human rights.*

n. *Acknowledging the rule of consensus as the pre-requisite for attaining universal human rights.*

o. *Emphasis on national legislation, national institutions and the creation of a human rights culture.*

p. *Maximum utilization of the expertise available in developing countries in all human rights activities.*

q. *Shifting the focus of all field operations towards building national capacities.*

r. *Intergovernmental bodies must approve any agreement entered into by the OHCHR with individual governments or their subsidiary bodies.*

s. *Voluntary financial contributions should not skew priorities set by the inter-governmental bodies and aggravate existing imbalances between rights, based on donor priorities.*

t. *Improving protection for the rights of minorities and migrants.*

....

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/121
17 March 1999

ENGLISH
Original: ENGLISH/RUSSIAN

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 9 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Letter dated 2 March 1999 from the Permanent Representative of Azerbaijan to the United Nations Office in Geneva addressed to the secretariat of the fifty-fifth session of the Commission on Human Rights

I have the honour to transmit to you herewith an appeal to the peoples of the world, States, parliaments and international organizations by the inhabitants of the town of Khojaly on the occasion of the seventh anniversary of the genocide in Khojaly.

I would be grateful if you could circulate the present letter and the above-mentioned information* as an official document of the fifty-fifth session of the Commission on Human Rights under item 9 of the provisional agenda.

(Signed) Sima Eivazova
Ambassador
Permanent Representative

---

* The annex is reproduced in English and Russian only.

Annex

APPEAL

from the inhabitants of the district of Khojaly to the peoples of the world, States, parliaments and international organizations

To the human tragedies of Khatyn, Hiroshima, Nagasaki and Song My, reckoned as the most monstrous events of the twentieth century, was added on 26 February 1992 the Khojaly genocide.

On the night of 25 to 26 February 1992 the armed forces of Armenia, with the active participation of the 366th regiment of the former USSR, at that time stationed in the town of Hankendi, took by storm the town of Khojaly, whose population totalled 7,000 inhabitants. For the previous four months the town had been invested on all sides by the armed forces of Armenia, so that the population were experiencing major difficulties in obtaining medical supplies and food. There were in the town many sick, wounded and elderly persons, as well as women and children.

On that night frenzied Armenian bandits with the support of foreign mercenaries razed the town of Khojaly to the ground. With the help of the extensive heavy military equipment resources of the 366th regiment the town was completely demolished and burnt. No pity was shown to the peaceful civilian population - children, women, old people and the sick were bestially slaughtered. The Khojaly nightmare was a crime of genocide perpetrated by the Armenians against the Azerbaijani people. The aim of the brutal butchers was the total annihilation of the town's population. By a lucky chance, however, many of Khojaly's inhabitants survived to bear witness to the event.

As in previous years we, witnesses left alive by a miracle at the time of the Khojaly genocide, are appealing with high hopes to all the progressive forces of mankind and to the competent international organizations in order to draw once again to the attention of the international community the importance of a political and legal assessment of this historic crime.

In the genocide perpetrated by the Armenians against the Azerbaijani people 613 persons were killed and 1,275 peaceful inhabitants taken hostage. The fate of 150 persons remains unknown to this day. In the course of the tragedy 487 peaceful inhabitants were more or less severely maimed. Among those killed were 106 women and 83 young children. The maimed included 76 children not yet of age.

As a result of this war crime, carried out with particular cruelty by Armenian bandit units, 6 families were completely wiped out, 26 children lost both parents, and 130 children one of their parents. Of those who perished, 56 persons were killed with especial cruelty: by burning alive, scalping, beheading, gouging out of eyes, and bayoneting of pregnant women in the abdomen. These inhuman acts were committed in the face of all mankind at the end of the twentieth century by a people that claims to be "cultured" and "wronged".

The policy of unfounded territorial claims and ethnic cleansing conducted by Armenia against Azerbaijan did not end with the Khojaly genocide. Supported and encouraged by partisans from abroad, they have occupied 20 per cent of the territory of Azerbaijan and expelled over a million Azerbaijanis from their immemorial historical lands.

We refugees from Khojaly have already now for the past seven years been appealing to all peace-loving, progressive, advanced international unions, associations and organizations. We appeal to you with aching hearts but also with high hopes. We implore you not to show lack of concern and indifference towards the sufferings and grief visited upon us as a result of Armenia's armed aggression. We do not believe that the competent international organizations and powerful peace-loving States cannot compel Armenia to respect law and order.

It is our hope that the world community will condemn Armenia's armed aggression against Azerbaijan, express from the standpoint of the rules of international law its categorical and unequivocal opinion regarding Russia's supplying modern weapons of mass destruction to Armenia, and assist in the restoration of the territorial integrity of Azerbaijan and the return of over a million refugees to their own homes. The President of the Azerbaijani Republic, G.A. Alief, consistently declares at all international events and meetings that we advocate peaceful settlement of problems, as all our actions demonstrate. We believe that the world community and the international organizations will take effective measures for the realization of the noble intentions of the President of Azerbaijan.

The people of Khojaly, who have lived through one of the most nightmarish tragedies of the twentieth century, call upon the peoples of the world to unite in the struggle for peace and tranquillity. We, the living witnesses to the Khojaly genocide, looking anxiously towards all the international organizations and to peace-loving, responsible States, appeal for a mobilization of efforts to put an end to wars and begin striving for a happy community of humankind in which there would be no war, development would progress and well-being would flourish.

Baku, 18 February 1999

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/122
17 March 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 17 of the provisional agenda

PROMOTION AND PROTECTION OF HUMAN RIGHTS

Letter dated 3 March 1999 from the Permanent Representative of Azerbaijan to the United Nations Office in Geneva addressed to the secretariat of the fifty-fifth session of the Commission on Human Rights

I have the honour to transmit to you herewith information on measures in the field of human rights undertaken by the Government of the Republic of Azerbaijan in the year of the fiftieth anniversary of the Universal Declaration of Human Rights.

I would be grateful if you could circulate the present letter and the above-mentioned information* as an official document of the fifty-fifth session of the Commission on Human Rights under item 17 of the provisional agenda.

(Signed) Sima Eivazova
Ambassador
Permanent Representative

* The annex is reproduced in the language of submission only.

Annex

INFORMATION ON MEASURES IN THE FIELD OF HUMAN RIGHTS UNDERTAKEN BY THE GOVERNMENT OF THE REPUBLIC OF AZERBAIJAN IN THE YEAR OF THE FIFTIETH ANNIVERSARY OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

1. Despite obstacles, mainly those presented by the continued military occupation of a part of the territory of Azerbaijan by neighbouring Armenia and the presence of about one million refugees and forcibly displaced persons in the country, the progress of democratic processes, the rule of law, the protection and promotion of civil, political, economic, social and cultural rights and freedoms are now realities of life in Azerbaijan.

2. One of the significant stages on the way towards the democratization of society and the formation of a State governed by the rule of law was the adoption, on 12 November 1995, as a result of a nationwide referendum, of the first Constitution of independent Azerbaijan, which reflected the principles of the Universal Declaration of Human Rights and established the basis for the legal reforms which are now under way in the country, in accordance with international and European standards on human rights. Ensuring human rights and fundamental freedoms has been reaffirmed in the Constitution as a main goal of our State. The Basic Law of Azerbaijan provides for the separation of powers, for freedom of speech and information, freedom of assembly and the right to form political parties, trade unions and other organizations.

3. In the short period since the restoration of its independence, Azerbaijan, which accepted the rule of universal values, the establishment of a democratic, legal and secular society as a model for development, has acceded to all the principal international instruments and many other multilateral treaties on human rights.

4. The initial reports submitted by the Government of Azerbaijan under the two International Covenants on Human Rights, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women have been already examined by the relevant treaty bodies.

5. In December 1998, the initial reports of Azerbaijan under the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment were submitted to the Secretary-General of the United Nations for consideration by the relevant treaty bodies.

6. The right to equal participation in the cultural life of the society is provided by the Law on Culture, adopted by the Parliament on 6 February 1998.

7. Guided by article 3 of the Universal Declaration of Human Rights, which proclaims everyone's right to life, on 10 February 1998, at the legislative initiative of the President of Azerbaijan, the Parliament totally abolished the death penalty in Azerbaijan.

8. With the purpose of the citizen's right to vote, the Laws on the Central Election Commission, on the Election of the President of Azerbaijan and on the Bringing in of Amendments and Changes to the Law on the Election of the President of the Republic of Azerbaijan, elaborated with the participation of the Office for Democratic Institutions and Human Rights of the Organization

for Security and Cooperation in Europe, the United States National Democratic Institute for International Affairs, representatives of opposition parties and individuals, were adopted in May, June and July 1998.

9. On 30 September 1998, the Parliament adopted the Law on Citizenship, elaborated with the expert assistance of the Office of the United Nations High Commissioner for Refugees and the Council of Europe.

10. With the purpose of promoting further development of democracy and human rights protection in Azerbaijan on the eve of the fiftieth anniversary of the Universal Declaration, the President of the Republic of Azerbaijan issued the following decrees and instructions:

"On measures in the Field of Ensuring the Citizen's and Human Rights and Freedoms" (see E/CN.4/1998/151);

"On Additional Measures to Provide for Freedom of Speech, Thought and Information" (see E/CN.4/Sub.2/1998/37);

"On the State Programme for the Protection of Human Rights";

"On Additional Measures to Promote a Higher Level of Juridical Education and Wider Dissemination of Information on the Protection of Human Rights and Election Legislation";

"On the Establishment of the Scientific-Research Institute on Human Rights of the Academy of Sciences";

"On Celebration of the Fiftieth Anniversary of the Universal Declaration of Human Rights and the Establishment of the Governmental Commission on this Occasion".

11. The President of Azerbaijan appealed on 23 June and 4 August 1998 to the main opposition political parties on the occasion of the forthcoming presidential elections in Azerbaijan.

12. On 18 August 1998, a project document entitled "On the strengthening of capacities and infrastructures for the promotion and protection of human rights in the Republic of Azerbaijan" was signed by the Government of Azerbaijan and the United Nations High Commissioner for Human Rights.

13. On 25 November 1998, a memorandum was signed between the Government of Azerbaijan and the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe.

14. Speaking at the celebration of the fiftieth anniversary of the Universal Declaration held on 10 December 1998, in Baku, President Heydar Aliyev focused on the mass human rights violations of Azerbaijanis as a result of the continuing aggression of Armenia against Azerbaijan and stressed the need for all officials to carry out their duties to protect human rights.

UNITED NATIONS **E**

Economic and Social Council

Distr.
GENERAL

E/CN.4/1999/123
17 March 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 5 of the provisional agenda

THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Letter dated 5 March 1999 from the Permanent Representative of Azerbaijan to the United Nations Office in Geneva addressed to the secretariat of the fifty-fifth session of the Commission on Human Rights

I have the honour to transmit to you herewith the commentary of the Government of the Republic of Azerbaijan on the information relating to article 1 of the International Covenant on Civil and Political Rights contained in the initial report of the Republic of Armenia (CCPR/C/92/Add.2) submitted under article 40 of the Covenant.

I would be grateful if you could circulate the present letter and the above-mentioned Commentary* as an official document of the fifty-fifth session of the Commission on Human Rights under item 5 of the provisional agenda.

(Signed) Sima Eivazova
Ambassador
Permanent Representative

---

* The annex is reproduced as received in the language of submission only.

Annex

COMMENTARY OF THE GOVERNMENT OF THE REPUBLIC OF AZERBAIJAN on the information relating to Article 1 of the International Covenant on Civil and Political Rights contained in the initial report of the Republic of Armenia (CCPR/C/92/Add.2) submitted under Article 40 of the Covenant

If we look back to the ancient times, historical facts confirmed by the research of Strabon and Plutarch unequivocally testify the existence at those times of the Albanian state on the territory which included present-day Nagorno-Karabakh region, the population of which was the precursor of modern Azerbaijani nation.

Independent Azerbaijani Khanate that was created later and covered the territory of the present-day Nagorno-Karabakh region of the Republic of Azerbaijan, during the days of feudal division on the threshold of XIXth century became the arena of strategic rivalry between Russian and Persian Empires. Under this circumstances, in accordance with the Agreement of 1805 the Karabakh Khanate was transferred to Russian Empire. Gulistan and Turkmenchay peace treaties of 1813 and 1828, that ended the Russian-Iranian wars fixed Azerbaijan, including the Karabakh Khanate, as a part of Russia.

During this period the mass migration of Armenians started from the Middle East to Transcaucasia including, *inter alia*, the territory of the present-day Armenia and the region of Azerbaijan which is known today as Nagorno-Karabakh. It is a matter of historical fact that only in 1828-1829, 130.000 Armenians from Middle East were resettled in Transcaucasia; later another 600.000 were also resettled. Thus, taking into account that the settlement of Armenians in Transcaucasia began only in the first part of the XIXth century, Nagorno-Karabakh region and any other part of the Azerbaijani territory could not be "... *an integral part of the Armenian State for thousands of years* ... " (page 6, point 21 of the report).

Nagorny-Karabakh was the inalienable part of the Democratic Republic of Azerbaijan in 1918-1920. After its fall the region was part of the Azerbaijan Soviet Socialist Republic. When Azerbaijan became in 1922 a part of USSR, the Nagorno-Karabakh region was within Azerbaijan, that was recognized by other participants of the Treaty on Formation of USSR, including Armenia. Belonging of this region to Azerbaijan was confirmed in the Constitution of USSR, and the Law of the Azerbaijan SSR "On the Nagorno-Karabakh Autonomous Region", adopted by the parliament of Azerbaijan in 1981 in accordance with the article 86 of the Constitution of USSR, which determined its legal status within Azerbaijan.

It should be underlined that the decision of Soviet authorities in 1921, mentioned in the report (page 6, point 21 of the report), did not transfer Nagorny-Karabakh to Azerbaijan but retained it within Azerbaijan, despite the attempts of Armenia, already possessed of the rich territories of Azerbaijani Zangezur, to seize the Nagorno-Karabakh region from Azerbaijan and to attach it to Armenia. Armenia never gave up the idea of appropriating that territory, and on many occasions raised this issue. Thus, in particular, on February 20, 1988, the Soviet of Peoples Deputies of the Nagorno-Karabakh Autonomous Region appealed to the Supreme Soviets of Azerbaijan, Armenia and USSR with request to consider a question on transfer of this region to Armenia. The information about this appeal and the reaction of the Supreme Soviet of Armenia to it are reflected in point 26 of the report (page 7).

However, the authors of the report passed over in silence the decisions in this regard of the supreme legislative bodies of Azerbaijan and USSR, which had deflected the above-mentioned request in accordance with article 78 of the Constitution of USSR of the following content: "*The territory of a Union Republic can not be altered without its agreement. The borders between the Union Republics can be altered on mutual agreement of the appropriate Republics, liable to approval by the USSR*". The Supreme Soviet of USSR confirmed by its decision of July, 1988, the unchanging of the borders of Azerbaijan and the sovereignty of Azerbaijan over its Nagorno-Karabakh region.

With the purpose to justify the territorial claims of Armenia to Azerbaijan the authors of the report refer to Law of USSR "On the procedure for dealing with matters arising from the secession of a Union Republic from the USSR" (page 8, point 29 of the report). Taking into account that the Law was aimed to regulate the interrelations within USSR and that the Union had been broken off, the Law had no any political and legal consequences. Moreover, the provisions of this Law were contradicted to the generally accepted imperative norms of International Law, as the destiny of a part of the territory of a Union Republic could be solved by all the people of a Union Republic but not of its certain part.

The comments by the authors of the report to the changes in the national composition of the population of the Nagorno-Karabakh Autonomous Region from 1970 to 1989 contained in the table (pages 6-7, points 22-23 of the report) are also attracted attention by very peculiar approach. Otherwise, how is it possible to explain the assert of the authors that "*The decline in the Armenian population of the Autonomous Region by 34,700 persons over the period from 1970 to 1989 was the result of the policy of Baku aimed at driving Armenians out of the region*" (page 7, point 23 of the report) if the above-mentioned table demonstrates at the same time that the number of Armenians in the Nagorno-Karabakh region of Azerbaijan increased over this period from 121.1 to 146.4 (in thousands)?

In reality, the facts in our possession, based on official statistical data, are spoken of a situation diametrically opposite to that represented by the Armenian propaganda. Despite this propaganda, Azerbaijanis have been annihilated and driven in great numbers from their historical lands since the Armenians began to settle the Transcaucasia in the first half of the XIXth century to the present days. Taking advantage of the changed demographic situation after their resettlement, Armenians, under the tutelage of the rulers of tsarist Russia and later of the communist leaders of the Soviet Union, oppressed the Azerbaijani population in various parts of Transcaucasia, including the Nagorno-Karabakh region of Azerbaijan, and increased their own numbers in those territories. According to Russian imperial statistics at the beginning of 20th century in Yerevan, present capital of Armenia, 70 per cent of the population were Azerbaijanis. By 1918 the number of Azerbaijanis in area which is now Armenia was 575,000 - more than a third of all inhabitants.

Following the establishment of Soviet rule in Armenia in late 1920, the Armenians were presented with a real opportunity to fulfil their age-old dream of creating an Armenian State and making territorial claims on neighbouring States. Over the 70-years of Soviet rule, the Armenians conducted a policy of building an "Armenia for Armenians only", expanding their territory at the expense of Azerbaijani lands and using every possible means to expel Azerbaijanis from their historical lands. The greatest achievement of the Armenian nationalists nestling in the leadership of the

USSR was the implementation at the State level, with Stalin's blessing, of repressive measures against Azerbaijanis on the pretext of providing a labour force for the cotton-growing regions of the Mugan-Milsk steppe in the Azerbaijani SSR and settling the vacated lands with Armenians coming from abroad. One of the leading figures in the Kremlin, the Politburo member for more than forty years A.Mikoyan, Armenian by origin, played a major role in the implementation of the Armenian nationalists' plans for the ethnic cleansing of Armenia. Making use of his influence over Stalin, he secured the signature of the "little father of the peoples" on resolutions by the Council of Ministers of the Union of Soviet Socialist Republics No. 4083 of December 23, 1947, "Resettlement of collective farmers and other Azerbaijani inhabitants from the Armenian SSR to the Kur-Arax Lowland in the Azerbaijani SSR", and No. 754 of March 10, 1948, "Action to resettle collective farmers and other Azerbaijani inhabitants from the Armenian SSR to the Kur-Arax Lowland in the Azerbaijani SSR". Under these resolutions, during the period 1948-1953 more than 150,000 Azerbaijanis were forcibly resettled from their historical homelands - the mountainous regions of Armenia - to the waterless steppes of Mugan and the Mil plateau. Many of them could not withstand the ordeal and perished.

The forcing of the Azerbaijanis out of Armenia was accompanied by flagrant violation of their constitutional rights and a refusal to cater to their national and cultural needs. Hundreds of thousand Azerbaijanis who remained in Armenia until 1988, surviving as compact groups, displayed none of the hallmarks even of national cultural autonomy. Attempts to so much as mention this were promptly, roughly and savagely suppressed.

As a result of the Armenian Government's deliberate policy of suppression and expelling the Azerbaijani population, there is no a single Azerbaijani at present in Armenia.

It is well known that the term "genocide" in Armenia has long since been converted from a legal concept into an abstract phenomenon unique to that country, inculcated in Armenian society from generation to generation in order to foster hatred of all things not Armenian, to create the ideological basis for territorial claims to the neighbouring States and to justify own crimes. Still, even the subtlest propaganda will never manage to dispute the real facts and to distort the chronology of the events at the end of 80th of this century.

Calling to mind events in several Azerbaijani towns (pages 7-8, points 27-28 of the report), the authors of the report "omit", as "true defenders of interests of the Armenian people" customarily do in such cases, to recall a number of circumstances that are of vital importance in elucidating the true causes of the widespread disturbances in the Azerbaijani towns they mention in the report, notably between February 26 and 28, 1988, in Sumgait. It must be recalled, first of all, that the first blood was split on the eve of the tragedy in Sumgait when, on February 22, 1988, near the settlement of Askeran on the Khankendi - Agdam highway, Armenian fighters opened fire on a peaceful demonstration by Azerbaijanis protesting against unlawful decisions by the Nagorno-Karabakh regional Soviet. Two Azerbaijani youths lost their lives in consequence, becoming the first victims of the conflict. The events in Sumgait were also preceded by house-burnings and attacks on Azerbaijanis in Khankendi and by violence against the Azerbaijani population in Armenia claiming its first victims, provoking a flood of Azerbaijani refugees and displaced persons who were directed, among other places, to Sumgait. The crowning circumstance is that the leading figure

in the disturbances in Sumgait was a certain Edward Grigorian, an Armenian and native of Sumgait, who was directly involved in the killings of and violence towards Armenians and the pogroms in the Armenian neighbourhoods. Grigorian was not able to escape, though he had been counted on to do so by those who had guided and directed him. By decision of the Criminal Division of the Azerbaijani Supreme Court dated December 22, 1989, Grigorian was sentenced to 12 years' imprisonment. The Court found Grigorian to be one of the organizers of the unrest and massacres. Depositions by witnesses and victims show that he had a list of flats inhabited by Armenians and, together with three other Armenians, called for reprisals against the Armenians, in which he took part personally. His victims (all Armenians) identified Grigorian as one of the organizers and active figures in the destruction and violence that occurred in Sumgait.

During the disturbances on February 26-28, 1988, in Sumgait, twenty-six Armenians and Azerbaijanis were killed. In all, the Azerbaijani Supreme Court convicted 66 people of crimes in Sumgait. It must be pointed out that the law-enforcement bodies in Armenia did not bring criminal proceedings against a single person for the brutal killings of 216 Azerbaijanis in Armenia in 1988-1989. Events in Sumgait and other Azerbaijani towns, being necessary to the Armenian leadership as a means of launching an extensive anti-Azerbaijani campaign and justifying the ensuing aggressive actions against Azerbaijan, had been planned and prepared in advance. A few days before the beginning of the events in Sumgait several Armenian families, the heads of whom, it later transpired, were closely connected to the "Krunk" Committee, an organization which must shoulder a substantial share of the responsibility for starting the war against Azerbaijan, hurriedly left the city. The only film to chronicle the disturbances, which was promptly distributed around the world, was shot on large-format colour stock by a professional crew from Armenia who had come to Sumgait specially 24 hours before the events there.

But the most telling refutation of the authors' mendacious inventions is undoubtedly the fact that, unlike Armenia, which has purged its territory of all non-Armenians and became a uniquely monoethnic State, more than 30,000 Armenians are still living in the capital of Azerbaijan, Baku, and they are full-fledged citizens of the Republic of Azerbaijan.

It is well-known that in the winter of 1988, a fresh bout of ethnic cleansing began as the culmination of a deliberate policy to destroy all traces of the very existence of Azerbaijanis in Armenia. Under instructions from, and with the blessing of the Armenian authorities, the remaining 40,897 Azerbaijani families (about 200,000 individuals) were forcibly deported from their historical homelands within the present-day Armenian State, and left without homes or belongings. The mass expulsion was accompanied by killings and maimings. During just three days, from November 27 to 29, 1988, in the course of pogroms in the Armenian towns of Gugark, Spitak and Stepanavan 33 Azerbaijanis were killed. In all, 216 Azerbaijanis died during the ethnic cleansing in Armenia in 1988-1989: 49 froze to death, seeking safety from reprisals in the mountains; 41 died of savage beatings; 35 were killed after torture; 115 were burnt alive; 16 were shot; 10, unable to endure the humiliation, died of heart attacks; 2 were killed right in hospital by their Armenian doctors; 3 were drowned; 1 was hanged; 1, not wishing to die an agonizing death, took his own life; 1 was electrocuted; 2 were beheaded; 29 were deliberately run over; 3 died in hospital because they were not given medical treatment; and a further 8 were abducted and vanished without trace. The majority of the dead were children, women and elderly people. They included 5 infants

and 18 children of various ages. Virtually all the attacks on Azerbaijani settlements had the blessing of the official Armenian authorities and were commanded by local leaders and responsible figures or by members of the local law-enforcement bodies. Taking into account the above-mentioned, the deduction of the authors of the report that "*... 8 to 10 month after the expulsion of the Armenians, Azerbaijanis living in the Armenian SSR were selling or exchanging their dwellings and leaving Armenia*" (page 7, point 27 of the report) can not be perceived seriously.

In this context, the following position of the Government of the Republic of Armenia with regard to the rights of the Azerbaijani refugees from Armenia reflected in the statement at the 54th session of the Commission on Human Rights by the Permanent Representative of the Republic of Armenia to the United Nations Office at Geneva is also attracted the attention by its refined cynicism and falsehood: "*We would like to remind the Commission that 168 thousand ethnic Azerbaijanis residing in Armenia at that time were provided enough time and the means to gradually leave the country and exchange and sell their property. Hence, they can not be considered as refugees. Moreover, Armenia has already paid the equivalent of 110 million US dollars as a compensation to Azerbaijani refugees*". Taking into account that the Armenian Government, in reality, still paid no compensation to the Azerbaijani refugees from Armenia, the contrary information disseminated in this regard by the Armenian Government should be the subject of careful consideration by the international community.

Returning to points 23 and 24 of the report containing the absurd allegations about "*... a policy of "ethnocide"*... " and allegedly "*... the appropriation or destruction of* ... " so called "*... monuments of Armenian culture*" (page 7), it should be reminded that during the forcible expulsion of the Azerbaijanis, hundreds of historical relics testifying to the fact that the lands in what is today Armenia had for centuries belonged to Azerbaijanis had been either destroyed or altered to look Armenian. Islamic places of worship and the graves in Azerbaijani cemeteries were defiled; mosques and tombs were damaged or broken up for building materials. To erase from history the fact that Azerbaijanis had lived in the place which is now Armenia, the names of some 2,000 towns and villages that formerly bore Azerbaijani names have been changed; 465 villages were renamed between 1935 and 1973, and 97 in April 1991. The concluding, tragic accord had been made in a meticulously planned campaign of physical extermination of the Azerbaijanis, once the most populous of the national minorities in the Republic of Armenia.

The military aggression of Armenia against Azerbaijan was preceded by anti-constitutional actions in the Nagorno-Karabakh region of Azerbaijan perpetrated by separatist groups receiving outside support; forming the backdrop to these actions were certain decisions taken by the Armenian authorities in contravention of international law. Most notorious of these decisions is the resolution "Reunification of the Armenian Soviet Socialist Republic and Nagorno-Karabakh" adopted by the Armenian Parliament on December 1, 1989. Moreover, in Armenia's Declaration of Sovereignty of August 23, 1990, part of the territory of another State - the Nagorno-Karabakh region of Azerbaijan - is recognized as an integral part of the Republic of Armenia. These decisions of the Armenian Parliament were enacted by its armed forces with the widespread use of mercenary bands and a sudden upsurge in terrorist activity by the Armenian special services and terrorist organizations against sovereign Azerbaijan State with a view to wresting away part of its age-old lands. All-out hostilities began at the end of 1991 and the beginning of 1992 when the armed

forces of Armenia initiated combat operations in the Nagorno-Karabakh region of Azerbaijan using the most sophisticated weapon systems. Since May 1992 armed forces of Armenia have made incursions beyond the borders of the former Nagorno-Karabakh Autonomous Region into other parts of my country.

As a result of about 11th years of war, 20 per cent of the territory of Azerbaijan, comprising Nagorno-Karabakh region and an area four times bigger than that region, has been occupied and held by the armed forces of Armenia.

It should be noted in particular that the Agdere and Agdam districts of Azerbaijan were seized by the armed forces of Armenia following the adoption of United Nations Security Council resolution 822 (1993) of April 30, 1993, which condemned the occupation of the Kelbajar district; the Fizuli district was seized after the adoption of Security Council resolution 853 (1993) of July 29, 1993, condemning the seizure of the Agdam district; and the Djebrail and Kubatly districts were seized after the adoption of Security Council resolution 874 (1993) of October 14, 1993. In its resolution 884 (1993) of November 11, 1993, the Council condemned the occupation of the Zangelan district and the city of Goradiz, attacks on civilians and bombardments of the territory of the Republic of Azerbaijan. In all above-mentioned resolutions, the Security Council underscored respect for the sovereignty, territorial integrity and inviolability of the borders of the Republic of Azerbaijan, and the inadmissibility of using force to acquire territory. It also demanded the immediate cessation of armed hostilities and hostile acts, and the immediate, full and unconditional withdrawal of all occupying forces from the occupied areas of Azerbaijan. Despite the unequivocal demands of the United Nations Security Council and the decisions adopted by the OSCE, Council of Europe and other international organizations in connection with the armed conflict, the Republic of Armenia is still occupying Azerbaijani territories, increasing its military presence there and illegally placing there Armenian settlers.

The military aggression of the Republic of Armenia against the Republic of Azerbaijan pursuant to its policy of acquisition of territory by force and its plans to establish a mythical "Greater Armenia" has resulted in gross and flagrant violations of human rights of the Azerbaijani population which fall within the category of crimes against humanity.

As a result of the aggression of Armenia against Azerbaijan, ethnic cleansing of the territory of Armenia proper and the occupying part of the territory of Azerbaijan, there are currently about 1 million refugees and forcibly displaced persons in Azerbaijan. A total of 900 settlements have been looted and burnt out. Over 9 million square metres of civilian housing, state enterprises and social facilities have been destroyed. The total cost of the destroyed housing and the property removed therefrom amounts to tens of billion dollars. As a result of the aggression by Armenia against Azerbaijan an extremely serious humanitarian situation has developed in Azerbaijan. Every year hundreds of elderly people, women and children die in refugee camps from diseases and epidemics.

Armed forces of Armenia, backed by mercenary formations and Armenian terrorist groups, have killed about 20,000 Azerbaijani citizens and wounded or maimed over 50,000. Thousands are missing and extrajudicial executions and mass shootings of civilians have been carried out. Kidnapped hostages held in Armenia and the occupied areas of Azerbaijan are doing forced labour and being made to endure inhuman treatment, beatings, torture and other gross violations of their human rights.

Finally, no doubt, that the attempts of the Armenian Government to misinterpret the right of peoples to self-determination as a unilateral right of persons belonging to ethnic minority to secession and create their own state, as well as the readiness, in this context, "*... to assist the realization of the right to self-determination anywhere in the world ...*" (point 33, page 8 of the report) represents the open threat to territorial integrity of the existing sovereign States and therefore can not be leave by the international community without attention.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/124
19 March 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 20 of provisional agenda

RATIONALIZATION OF THE WORK OF THE COMMISSION

Letter dated 9 March 1999 from the Permanent Mission of the Republic of Korea to the United Nations Office at Geneva, acting as Coordinator of the Asian Group, addressed to the secretariat of the Commission on Human Rights

The Asian Group requests that the position paper of the Asian Group on the Bureau's report regarding the review of mechanisms of the Commission (E/CN.4/1999/104 (annex herewith)*, which is the product of a two-month-long endeavour by all members of the Group, be published as an official United Nations document and circulated to all interested parties prior to the commencement of the fifty-fifth session of the Commission.

---

* The annex is reproduced as received in the language of submission only.

GE.99-11553 (E)

Annex

Position Paper of the Asian Group on the Report of the Bureau of the 54th Session of the Commission on Human Rights submitted pursuant to Commission decision 1998/112

I. Introduction:

1. The Asian Group wishes to extend its complements to the efforts made by the Bureau in the arduous task of preparing the report on the review of mechanisms and will continue to seek all cooperative avenues in the pursuit of improving the mechanisms of the Commission on Human Rights for the purpose of the protection and promotion of human rights universally.

2. We appreciate that the report has offered various recommendations which, in the Bureau's perception, are aimed at improving the effectiveness of the Commission. However we also observe that many of those recommendations advocate intrusiveness as a means of enhancing the effectiveness of the mechanisms as opposed to enlisting, and focusing on the cooperation of the States concerned.

3. Over the last year, the Asian Group has actively participated in the exercise of the Review of Mechanisms, and has made particular efforts in the preparation of a common position on the Review of Mechanisms which was subsequently submitted to the OHCHR. It is with regret and concern that the Group notes, however, that the views of its 34 member countries have not received just and balanced reflection in the report by the Bureau.

4. For these reasons, the Asian Group avails itself of this opportunity to present its common views to states, the OHCHR, other concerned international organizations, NGOs and other interested individuals. The Group requests that the points illustrated in the paper be duly reflected in the course of our discussions at the forthcoming Commission. It is our expectation that our efforts to enhance the effectiveness of the mechanisms will find widespread support.

5. Towards these ends, the Asian Group has attached, herewith, the Statement by the Asian Group Coordinator on Item 3 - Organization of the Work of the Session at the 54th Session of the Commission on Human Rights of March, 1998, and the Written Submission of the Asian Group on the Review of Mechanisms and Bodies of the Commission on Human Right of July, 1998.

II. General Comments

6. The Asian Group views that a number of the recommendations made by the Bureau seek to enlarge the role of the CHR monitoring mechanisms, thereby expanding the scope of discussions on one agenda item (country situations) at the expense of other agenda items and using the CHR and its Bureau as a means to pressure States to cooperate with human rights mechanisms. These proposals will only lead to further politicization of the CHR and its activities.

7. In this context, the Asian Group reminds the CHR of the spirit of the two draft resolutions L.2 and L. 105 introduced at the 53rd Commission which called for an end to politicization and selectivity together with the promotion of dialogue,

cooperation and consensus building.

8. The report also lacks conceptual ideas on how balanced and non-selective human rights programs can be constructed and maintained. The Asian Group believes that the report is found wanting in providing guarantees to maintain the VDPA benchmark of indivisibility that is to pay more attention to economic, social and cultural rights as well as the right to development.

9. We should also like to indicate that the Bureau intends to expand its own scope and functions far beyond those performed by any Bureau in the past and other such bodies elsewhere in the UN system. The report seeks to make the Bureau an inherent and permanent part of the monitoring activities of the CHR. This is an unhealthy development and will result in reducing the credibility of the Bureau.

III. Assessment of the Recommendations of the Bureau

10. In order to better clarify and express the Asian Group's views, specific comments are provided below on the 13 recommendations for action found in the report.

11. **Recommendation 1**: The Asian Group appreciates the efforts of the Bureau to streamline the network of mandates. However, the Group is unable to support the present recommendation in its current form due to its failure to consider the full, broad range of mechanisms. We note that the recommendation has been made at a stage when creation of special procedures to look at various aspects of civil and political rights are almost completed and a similar exercise has just begun in the field of ESC rights. Instead of giving more attention to ESC Rights, those specifically recommended for consolidation seek instead to eliminate mandates in the field of ESC Rights. The process of looking at mandates for consolidation should be universal, fair and without politicization.

12. **Recommendation 2:** This recommendation states that the Chair of the Commission should play a role in assisting in securing governmental responses at the request of the special procedure concerned. Though presumably designed to create a more expeditious system, this recommendation nevertheless serves to undermine the credibility and impartiality of the Chairman by tying his role to those of the special procedures and also increases the burdens governments face in responding to these urgent appeals. The Asian Group, on these grounds, does not support this recommendation.

13. **Recommendation 3:** The Asian Group finds it odd that the Bureau would recommend that appointments to special procedure posts be made by the Chair of the Commission following consultations with the Commission's Bureau as opposed to a practice whereby appointments would be made by the Bureau in consultation with regional groups. As States become members of the Bureau in their capacity as representatives of regional groups, they must speak collectively for the groups they represent. The Asian Group therefore does not support this recommendation.

14. **Recommendation 4**: Recognizing that Human Rights is one of several issues faced by ECOSOC, the Asian Group is concerned that the Commission may be commenting on the issues that are within the prerogatives of ECOSOC.

15. **Recommendation 5**: The Asian Group agrees with the recommendation to maintain the current practice of standard 3-year terms for thematic mechanisms. However, the suggestion to give to the CHR more than one year mandates for country-specific mechanisms -- though on a case-by-case basis -- could not be accepted on the grounds that such a measure will pre-empt the CHR's decision-making prerogatives.

16. **Recommendation 6:** In accordance with the earlier submission of the Asian Group, the recommendation to establish a limitation of six years per mandate is warmly welcomed and in principle the Group accepts the position of the recommendation. Pertaining to the issue of re-assignment, the Asian Group is hesitant to support the practice of reassignment, and prefers instead to encourage a system whereby new individuals are brought into the system.

17. **Recommendation 7:** The Bureau has suggested that at each session of the Commission there should be regular, focused and systematic deliberations on serious incidents or situations involving a failure or denial of cooperation by governments with the Commission or its mechanisms. This recommendation, however, has much the same effect as creating a new agenda item on country situations because the process of determining which countries are or are not cooperating will be political and not objective. The process has the unfortunate result of creating an environment that is adversarial and not conducive to facilitating the stated objective of encouraging respect and cooperation. Furthermore, it is in the interest of the Commission to avoid confrontation among states and also to focus on trends rather than isolated incidents. For these reasons, the Asian Group is unable to support this recommendation.

18. **Recommendation 8:** It was recommended in the Written Submission of the Asian Group that efforts be made to decrease the overall length of reports and to circulate the original language of the documents in advance of the other versions produced in the other UN official languages. The Asian Group is pleased to observe that the Bureau, in recommendation 8, has made such welcome efforts to accomplish these ends. Although this recommendation does not succeed in addressing the length of the documents per se, sub-parts a and b are fully accepted and appreciated.

19. In sub-part c, regarding executive summaries, it is important to note that, while these summaries may serve the useful purpose of providing a brief, accurate presentation of a more lengthy document, it is inappropriate for the OHCHR to develop standard formats for such summaries as the contents of all documents differ, and undue attention will necessarily be drawn to categories that the OHCHR has *a priori* determined to be relevant, but are not necessarily reflective of the document's contents. Executive summaries should be brief, factual and balanced summaries of the document on which they report, and should be structured in such fashion as to reflect the main points of the document itself, paying all due attention to the intentions of the document's authors. Sub-part c is therefore accepted in a qualified manner, with objections hereby raised to the means of generating the proposed executive summaries. Ideally, the author of the

report should prepare the executive summary.

20. Sub-item d cannot be accepted by the Asian Group for reasons just stated. The *a priori* decision to illuminate certain types of information in the executive summaries runs counter to the idea of providing a representative, shorter-length document that accurately reflects the document on which it reports. Specifically calling attention to "observations or recommendations concerning serious incidents or situations involving a failure or denial of cooperation with the Commission or its mechanisms" is therefore not consistent with this balanced and factual approach.

21. **Recommendation 9:** This recommendation, designed to devise a means of utilizing and following up on the work of the special procedures, is poorly conceived and should be dropped. As stated regarding recommendation 8, executive summaries are tools designed to aid in the reading of lengthy documents. It is, specifically, a logistical tool, and not part of a process to selectively illustrate or illuminate bits of data of interest to the Commission. It is therefore inappropriate for such summaries to form the "principle basis" for anything, let alone for organizing discussion during dialogues on state cooperation. As one would be ill advised to confront the author of a book having read only the jacket summary, the executive summary is no substitute for the full report and never should be divorced from it else the contents of the document later be viewed as superfluous.

22. **Recommendation 10:** This recommendation calls for a new document to be prepared by the OHCHR in September of every year which summarizes the progress realized and steps taken in connection with the recommendations of the mechanisms for the Bureau to review in the advance of the human rights debate in the General Assembly. The Bureau would then consider what appropriate steps it should take or what advice it may offer to concerned parties regarding follow-up. This effectively elevates the Bureau to the status of a new monitoring body and is contrary to the present duty and function of that organ. The secretariat alone cannot, and at no point in the future should be able to, independently pass judgments on state actions. This is a task reserved, at present, for the special procedures themselves. No support, therefore, can be granted to this recommendation.

23. **Recommendation 11:** Recommendation 11 proposes an alternate 1503 procedure which involves the creation of a new body of five independent experts appointed by the Chairman. It also suggests two phases of deliberation at the Commission level. However, we cannot support the recommendation for the following reasons: First, the report does not make clear the reason and grounds for newly setting up a body to conduct the procedure which consists of five untested members appointed by the Chairman of the CHR, replacing the Working Group on Communications which presently consists of five members of the Sub-Commission. Second, the suggested process of two phases of deliberations at the Commission may encourage politicization and undermine confidentiality of the procedure. And third, a span of five months in which governments are obliged to respond, provides too little time for the concerned government to prepare an adequate response.

24. Therefore, the Asian Group is of the view that the unanimous recommendation made by the Group in its written submission of July, 1998 (namely that the only reform required is to have the Working Group on Communications meet twice, first to screen communications to decide what should be referred to Governments for a response and then, to decide on the basis of responses from Governments which communications should be referred to the Sub-Commission) must be accepted. Additionally, we would like to reiterate our suggestion in the previous written submission that the first meeting of the Working Group on Communications would be requested to ensure that 1503 submissions meet the following pre-conditions: A) They exhaust domestic remedies; B) They demonstrate that the matter under consideration is a gross and reliably attested violation of human rights and fundamental freedoms; C) They are clearly devoid of politicization.

25. **Recommendation 12:** The Asian Group is satisfied with the renewed emphasis on role of the Sub-Commission as a "think tank" but remains concerned about its actions with regard to country situations. The Bureau's recommendations in this regard are welcome insofar as they propose an abolition of the practice of passing all resolutions and reaffirm its status as a think tank. The Bureau, however, recommends a retention of the country situations debate and that a summary be forwarded to the CHR.

26. The main problem in the recommendation is the attempt to change a democratic procedure of direct election by members of the CHR for a non-democratic procedure of nomination by the Chair. This, along with related issues such as term limits; the need to ensure that members do not hold an office in the executive branch of the Government, etc. should be rejected. No valid justifications have been provided for the arbitrary proposals that the period of the Sub-Commission session be reduced to two weeks and that the membership be reduced from 26 to 15. The Sub-Commission has been improving itself and is doing important work in the field of ESC rights and terrorism, etc. There is no reason whatsoever to proceed in such haste. The Asian Group is therefore of the view that this recommendation be accepted without changing the election procedures, the size of the body or reducing the length of the session.

27. **Recommendation 13:**. Sub-item (a) is welcomed by the Asian Group. On (b) the Asian Group would like to recommend a flexible approach and on (d) it would like to know the financial implications of providing chairpersons with such standing authority. However, it is not clear what the Bureau's intention is regarding the matter of consensus. Regarding sub-item c, it is the view of the Asian Group that every effort should be made to reach consensus on standard-setting exercises, and if required these rules of procedure should be amended.

IV. Conclusions and Suggestions

28. Considering that only consensual agreements can secure genuine compliance, it is necessary for all interested parties to pursue dialogue and cooperation rather than to resort to enforced means of effectiveness. Nevertheless, it is unfortunate that no practical proposals have been put forward to enhance constructive dialogue and cooperation with States as better alternatives to confrontational approaches.

29. For this reason, and those others provided in this paper, the Asian Group reemphasizes the following elements as being particularly important for the mechanisms of the Commission. These are:

- Enhancing constructive dialogue, communication and cooperation with States as better alternatives to confrontational approaches;
- Recognizing the universality, indivisibility and inter-dependence of human rights;
- Avoiding politicization and selectivity;
- Paying more attention to economic, social and cultural rights, as well as the right to development, so as to bring about the required, more appropriate balance;
- Paying more attention to the promotional aspects of human rights by Special Rapporteurs, to bring about the required, more appropriate balance with the protection of human rights;
- Paying due regard to, and respecting the cultural and religious particularities of each society as these particularities define the milieu in which human rights and fundamental freedoms are realized and exercised;
- Paying attention to, and seeking out an understanding of the causes for lack of cooperation from governments in those situations where difficulties arise between the mechanisms and governments;
- Seeking regional balance and gender balance in the staffing and functioning of the mechanisms in the United Nations system;
- Enhancing the promotional role of the mechanisms by, *inter alia*, assisting states in their national capacity building on human rights through advisory services and the technical cooperation programme;
- Providing institutional arrangements for negotiations on country situation resolutions by the Bureau of the Commission. The negotiations should be by a member of the Bureau with participation by a representative of the country concerned.

30. In light of the differing views on the contents of the Bureau's report, and of the sometimes conflicting views of large groups of states, The Asian Group finds it imperative that a post-sessional, open-ended working group of Governments -- based on the principle of consensus -- be set up to examine all important issues that the Bureau has raised and to review the Bureau's proposals with a view towards modifying them as possible to achieve the best results for all.

* *It is hereby noted that Japan is not associated with all the views herein expressed by the Asian Group in this Position Paper.*

Enclosures: *

1. Statement by the Asian Group Coordinator on Item 3 - Organization of the Work of the Session at the 54th Session of the Commission on Human Rights;
2. Written Submission of the Asian Group on the Review of Mechanisms and Bodies of the Commission on Human Rights.

\- - - -

* Available for consultation in the files of the Secretariat.

UNITED NATIONS **E**

Economic and Social Council

Distr.
GENERAL

E/CN.4/1999/125
22 March 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Items 9 and 14 (b) of the provisional agenda

QUESTION OF THE VIOLATIONS OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

SPECIFIC GROUPS AND INDIVIDUALS: MINORITIES

Letter dated 26 February 1999 from the Chargé d'affaires a.i. of the Permanent Mission of Yugoslavia to the United Nations office at Geneva addressed to the Chairman of the Commission on Human Rights

I have the honour to transmit, enclosed herewith,* the Information on terrorist activities and provocations by the Albanian separatists in Kosovo and Metohija following the Agreement between the President of the Federal Republic of Yugoslavia, Mr. Slobodan Milosevic, and the United States Special Envoy, Mr. Richard Holbrooke, in the period from 13 October 1998 to 21 February 1999. I would like to ask you to have it published as an official document of the fifty-fifth session of the Commission on Human Rights under items 9 and 14 (b) of the provisional agenda.

(signed) Branko BRANKOVIĆ
Ambassador
Chargé d'affaires a.i.

GE.99-11574 (E)

* This annex is reproduced as received in the language of submission only.

INFORMATION

on terrorist activities and provocations by the Albanian separatists in the region of the Autonomous Province of Kosovo and Metohija following the agreement between the President of the FRY, Mr. Slobodan Milosevic, and the US Special Envoy, Mr. Richard Holbrooke, in the period from 13 October 1998 to 21 February 1999

In the period from 13 October 1998 to 21 February 1999:

There was a total of 827 attacks and provocations, of which 290 were against civilians (115 Serbs) and 537 against the Interior Ministry officers. A total of 99 persons were killed, out of which 80 were civilians and 19 were police officers. 54 persons sustained serious injuries. 64 persons were abducted (6 police officers), of which 3 were killed. The fate of 29 civilians and 3 police officers is still unknown. 35 terrorist attacks against the members of the Army of Yugoslavia were recorded, whereas 2 soldiers were killed and 4 sustained serious injuries. Following the agreement, the number of terrorist acts increased (one additional attack per day, in comparison to the previous period)

Terrorist attacks launched since the beginning of the Rambouillet talks (6-21 February 1999)

1. Killed and wounded persons

Individuals were killed and wounded on a daily basis with the exception of the period from 11 to 17 February 1999. For the most part the persons killed were Albanians while a smaller number of them were Serbs (of both sexes). A total of 19 persons were killed. A total of 3 persons were wounded, all three of them Serbs, on 16 and 19 February.

2. Abducted persons

A total of 13 persons were abducted, out of which there were 12 Albanians and one Serb. On 20 February, the President of the Kosovo Democratic Initiative for the Municipality of Ka~anik, an ethnic Albanian, was abducted. A representative of this party is taking part in the talks in Rambouillet. The only abducted Serb, an officer of the Interior Ministry of the Republic of Serbia, was taken on 9 February.

3. Mistreatment

In this period, both the Albanians and Serbs were mistreated on a daily basis. Individuals as well as entire families were mistreated.

4. Attacks against the army and police

Attacks against the army and police officers have been carried out in this period on a daily basis. Fifteen attacks were launched against the police, while 8 were launched against the members of the Army of Yugoslavia. The most recent attack both against the Army of Yugoslavia and the police was launched on 21 February 1999.

- - - - -

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/126
22 March 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Items 9 and 14(b) of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND
FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

SPECIFIC GROUPS AND INDIVIDUALS: MINORITIES

Letter dated 26 February 1999 from the Chargé d'affaires a.i.
of the Permanent Mission of Yugoslavia to the United Nations
Office at Geneva addressed to the Chairman of the Commission
on Human Rights

I have the honour to transmit, enclosed herewith,* the text entitled "International Media Farce on the so-called Oppression of the Albanian National Minority in Serbia". I would like to ask you to have it published as an official document of the fifty-fifth session of the Commission on Human Rights under items 9 and 14(b) of the provisional agenda.

(signed) Branko BRANKOVIĆ
Ambassador
Chargé d'affaires a.i.

---

* The annex is reproduced as received in the language of submission only.

GE.99-11581 (E)

INTERNATIONAL MEDIA FARCE ON THE SO-CALLED OPPRESSION OF THE ALBANIAN NATIONAL MINORITY IN SERBIA

HOW IS IT POSSIBLE THAT ALBANIANS IN KOSOVO AND METOHIJA, WHO CLAIM TO BE SYSTEMATICALLY PERSECUTED AND OPPRESSED, REACHED NEVERTHELESS SUCH A LEVEL OF DEVELOPMENT THAT IT IS NOW PRISTINA AND NOT TIRANA THAT WANTS TO BECOME THE LEADING CENTRE OF OVERALL ALBANIAN UNIFICATION CONTAINED IN THE IDEA OF A "GREATER ALBANIA"?

For those, curious and well-intentioned in world media intensively engaged in the issue of Kosovo and Metohija over the past months, such a question arouses one to think over and study the essence of what is going on in this southern Serbian province. A suddenly provoked campaign to change the state and political status of Kosovo and Metohija, followed by terrorism, is continuously on front pages and prime times in most world media, but recipients are being offered a simplified and dangerously distorted picture, which is in fact hiding rare attempts to analyze and explain in a serious way why such a thing is happening at the end of the 20th century.

The world is aware that a change of status for Kosovo and Metohija is being claimed "in the name of national, minority and human rights and freedoms". Such a media stereotype does not incite one to think that, behind a campaign followed by terrorism, lies the first, but basic step aimed at creating a "Greater Albania". The peak of the political and media hypocrisy is certainly the fact that a so-called liberal and democratic movement conceals a scenario for a final establishment of an ethnically pure state of Albanians in the Balkans.

Kosovo and Metohija is the key to the "greater Albanian" endeavour and has been triggered in the light of two facts:

First, the state power of today's Albania with its weaknesses, crises and conflicts is not strong enough to be the Piedmont of Albanian unification; as Kosovo and Metohija has an extraordinary geographic and strategic position ("fortress of the Balkans" and its epicentre), natural and demographic resources, it is to play the role of unification, but it has previously to change its state and political status;

Second, secessionists count on the situation the FR of Yugoslavia faced after the break up of former Yugoslavia and secession of former Yugoslav Republics, making through the unprecedented media campaign based on lies its rating in the international community very low.

It is further more naive to believe alleged facts on the "liberation nature of the armed resistance" of Albanians and its spontaneous gathering. When denouncing this notorious media lie, one has to take into account several important facts.

First, attempts to set up a "Greater Albania" by seceding Kosovo and Metohija are not an authentic expression of the Albanian national minority. As in the distant past, it is, today as well, an instrument easing the accomplishment of great powers' interests. At the time of the Albanian League, referred to with proud by Albanians and their promoters, its political program was not an expression of this nation's struggle for liberation, but the expression intended at preserving the Ottoman Empire. Today, the alleged "national movement" hides understandable aspirations of great powers, considering Kosovo's wealth in resources and the fact that the future oil pipeline, running from the Caspian Sea further toward the West, is to cross Kosovo and Metohija.

Second, the starting point of the Albanian concept has always been that it would be possible for national aspirations to be settled to the detriment of other peoples, and, as a rule, with the help of some great power being the most influential in the region at the time. When, in June 1878, was founded the Albanian League, its program was presented as if there were no population belonging to another nationality and living in the area the League aspired to. At that time, Albanians made 44% of the total population. Even today, when they mention Kosovo and Metohija, no mention is being made to population of other origin. Such an anti-liberal and anti-democratic form of national unification, with discriminatory contents, strongly affects present events, but this fact is being purposely disregarded by media in Western democracies. Aspirations of ethnic Albanians wrapped in such a way would weaken and break up three orthodox federal units of the former Yugoslavia, and , according to experts, they would most hit Serbia. Namely, Kosovo and Metohija is, except for eastern Orthodoxy, the third important factor of Serbian national identity. It is estimated that in that case Montenegro would lose one third of its territory, and the FYR of Macedonia would practically cease to exist. We can not recall that anyone among the most influential has ever pointed to the general public this dimension of the problem in Kosovo and Metohija and the manoeuvre made with the aim of secession of Kosovo and Metohija and creation of a "Greater Albania".

Third, a new unified Albanian state is possible solely as a state created by foreign intervention in highly undemocratic conditions, as it is anyway the case with today's Albania. The whole concept is based on forceful albanisation, expulsion of non-Albanian population and establishment of an ethnically pure state the rise of which would be beyond its own ethnic region. A false democratic authorization of the Albanian issue, with constant referrals to human rights, is but a concealed invitation for the principle of national homogenisation to be applied.

Thus, in fact, NATO's voicing in regard to Kosovo and Metohija seems to reaffirm anew the close links this union has to do with the accomplishment of the "Greater Albania" project. It is hence understandable, why such a union is ignored by the media. The military pacts Albania concluded and its coming closer to NATO several years ago, confirm how much seriousness was invested in military preparations aimed at provoking from the outside the Kosovo and Metohija crisis.

Forth, the "greater Albanian" idea being the root of the current crisis in Kosovo and Metohija, it is originally under the sign of radical political Islam.

There is now a tendency to represent the centuries-old historic Muslim oppression over neighbouring Christians as an alleged oppression of Albanians by neighbouring Christians. If that stereotype is to be accepted by Western countries, there is a serious danger that the radical Islam turn against those who are presently giving their blessing to it.

Experts warn that any change in Kosovo and Metohija aimed at "greater Albanian" goal would threaten balance in the Balkans, and Europe would soon be faced with the Algerian scenario of rejecting European models. Hiding these facts from its general public in the name of making a Satan of the "disobedient Serbia", Western media become part of a typical Islamic offensive, although the latter would not stop at the Balkans and this part of Europe. This is ever more realistic if documents of the Albanian League - a "bible to Albanians - are but given a glance at. The Islamic character of the movement is noticeable in the facts that sessions of the League were being held in the Prizren mosque, whereas the special characteristic of the statute was Islam. The sixteen articles of this document do not mention explicitly Albanians and Albania. All those of Muslim religion are the political subject of the League, and deserting the League is qualified as "deserting Islam".

Fifth, the "Albanian movement" insists on an ethnically pure state. The first example of ethnic cleansing, recently, in the Balkans was registered in its moves in the southern Serbian province. It ended with almost 800 ethnically pure villages, without Serbs, Romanies, Turks... Ethnical cleansing is a constant in the "greater Albanian movement", but it does not prevent Western media from creating a distorted picture of Serbs as "ethnic-hygiene makers". Although the ethnic structure in Kosovo and Metohija, in the aftermath of the Berlin Congress, First and Second World War, and communist oligarchy, has been continuously changing to the detriment of Serbs, it seems as if it were not convincing enough for designers of Western general public. Thus, this is the culmination of the process of weakening Serbia by means of the Albanian issue in Kosovo and Metohija. That way, Western media analysts have given their modern contribution to the strategy in force at the time of Broz.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/127
22 March 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Items 9 and 14 (b) of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND
FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

SPECIFIC GROUPS: MINORITIES

Letter dated 26 February 1999 from the Chargé d'affaires a.i.
of the Permanent Mission of Yugoslavia to the United Nations
Office at Geneva addressed to the Chairman of the
Commission on Human Rights

I have the honour to transmit, enclosed herewith,* the Aide-Memoire entitled "The Albanian Separatists' Terrorism in Kosovo and Metohija". I would like to ask you to have it published as an official document of the fifty-fifth session of the Commission on Human Rights under items 9 and 14 (b) of the provisional agenda.

(signed): Branko BRANKOVIĆ
Ambassador
Chargé d'affaires a.i.

* The annex is reproduced as received in the language of submission only.

GE.99-11588 (E)

AIDE MEMOIRE

The Albanian separatists' terrorism in Kosovo and Metohija

Although the Albanian separatists' terrorist activities in Kosovo and Metohija have surfaced to a massive degree in its extreme armed form by the beginning of 1988 (the attacks against the Security forces in the Villages of Luzane and Likosane in February), the roots of such activities are reaching the long past time, but the strategic goal has remained the same - the forming of "Great Albania" as ethnically cleansed and extremely national state of all Albanians.

The Albanian terrorism in Kosovo and Metohija is caused by the political concept of expelling by force and threatening the non-Albanian population, first of all, Serbs and Montenegrins, in order to gain the majority within the national structure of the population, aiming to provide the grounds upon which the demands would be made for the political control of the territory, which would then be affiliated to the envisaged "Great Albania" that should comprise of other neighboring countries - Macedonia and Greece - territories.

THE ROOTS AND THE CONTINUITY OF ALBANIAN SEPARATISM AND TERRORISM

Murders, persecution and ill-treating of the Serbian and Montenegrin population had started under the domination of the Ottoman Empire, availing of the fact that the majority of Albanian population, having accepted Islam, had the privileged status with the Turks and so, without condemnation or punishment, committed violent acts against the Christian Serbian and Montenegrin population. The violence was committed by the local Pashas and those in power.

After Serbia and Montenegro were liberated from the Turkish occupation, by the end of the 19 century, the extent of the violence had decreased significantly, but has never ended completely. The Albanian separatists and terrorist have availed themselves of the events in the World War One, during which Serbia had suffered a lot, to renew and intensify the violence against the Serbian and Montenegrin population. The history records, as particularly cruel the mass killings of the exhausted, starving and frozen Serbian soldiers in 1916 while the Serbian army was passing over the Kosovo and Metohija and Albanian mountains, withdrawing towards Greece.

Following the end of the Great War, from the years of 1919 to 1924, at the Kosovo and Metohija territory, the terrorist crimes were committed by the so-called "Kachak movement" - the merging of the "Great Albania" policy with banditism and violence. However, the Kingdom of Yugoslavia had for about 20 years successfully suppressed the Albanian terrorism and banditism, so there were no negative consequences of greater substantiality.

The "Kachak" Albanians terrorism in larger extent and with destructive aftermath to the Serbs, Montenegrins and other communities in Kosovo and Metohija was resurrected under the "baton" of the Fascist Italia, immediately following the conquest of Albania in April, 1939. The infiltrations of the criminal gangs from Albania into the Kosovo and Metohija territory, contrary to the Italian Government obligation under the intrastate agreement to observe the integrity of Yugoslavia, were aimed at provoking armed conflicts and preparations of the grounds for the later to occur fascist conquering and tearing-up of Yugoslavia. After a short-termed war in April (which started by the Nazi Germany aircraft bombing Belgrade on April 6, 1941), following the German and Italian Foreign Ministers agreement (Vienna, April 21 - 24, 1941) the Italian Dictator Benito Mussolini on July 29 same year officially promoted the "Great Albania" with the eastern part of Montenegro, Kosovo and Metohija, western parts of Macedonia and a part of the Greek Epirus were annexed. This is how, helped by the fascist powers, the collaborationist, chauvinistic "Great Albania" was established - the Albanian separatists and terrorists' dream ever since.

Under the auspices of the Fascist Italy and with its help, during the three-year occupation the Albanian separatists and terrorists in Kosovo and Metohija have killed around 10000 of Serbs and Montenegrins, burned down and destroyed around 30000 houses and expelled between 60 to 70 thousands of Serbs and Montenegrins. Within the same period, over 100000 Albanians had emigrated from Albania and settled at the expelled Serbs' and Montenegrins' property.

By the capitulation of Italy in September 1943, the Albanian terrorists acquired a new advisor - the Nazi Germany, hoping to ensure their interests with its help. The Allies' triumphant progressing that started by the middle of 1944, to which the Yugoslav People's Liberation Army contributed significantly, before all in independently liberating its own country, finally cracked the Nazi Third Reich. From then on till the breakdown of Germany, the Albanian terrorists, loyal servants of Fascism, shielded the German army retreat from Greece, crossing Kosovo and Metohija. After the Germans' retreat, the remnants of the Albanian separatists terrorism's gang units stayed in Kosovo and Metohija, not giving up the idea and readiness to continue with their struggle to establish Albanian ethnic borders.

The Yugoslav People's Liberation Army, by May 1945 when Germany capitulated, defeated the main part of bandit formations and during some time after the war ended, continued combating the rest of the terrorists - "balists" in the Kosovo and Metohija woods. Immediately following the World War Two, taking advantage of the favorable climate in the relations of Yugoslavia and Albania, additional 200000 Albanians were moved from Albania to Yugoslavia and the Serbs and the Montenegrins, who were expelled during the Italian occupation, were banned from returning to their property.

While the former Yugoslavia existed, the national-separatists' ravaged nests (in Drenica and elsewhere) sporadically attempted to activate their

terrorists efforts, but with no success. Also, within the period of the former Yugoslavia's existence, being prevented from realizing their intentions by the most radical methods - terrorism - the Albanian terrorist have pursued their Great Albania and chauvinist aims through political pressures, blackmailing and manipulations, taking advantage of some of the former Yugoslav Federation republics separatism, first of all Slovenia and Croatia, for the accomplishment of their political goals. Within the same period, protected by the Albanian politicians then controlling this Serbian province, silent expulsion of Serbs and Montenegrins was in its course, increasing with the degree of this Serbian province independence in relation to the republic and state authorities From 1981 to 1988 only, around 28000 Serbs left Kosovo and Metohija under the pressure of the Albanian separatists.

The role of Albanian separatism and terrorism in the breakdown of the former Yugoslavia

New momentum to the Albanian national-separatist and terrorist movement was gained by the end of the eighties and the beginning of the nineties. The Province benefited a wide autonomy, consisting elements of the federal and confederal status (directly represented in the Federation, although an integral part of Serbia, independently deciding on almost all the issues, not having to consult the Republic of Serbia, nor was the Republic of Serbia given the authority to contest the decision, absolute jurisdictional, executive and all other authorities, etc.) did not suffice, since the Albanian separatists' goal, both now and then, was absolute authority and independence. In the process of violently breaking up former Yugoslavia, the same political leaderships of the former Yugoslavia republics that had seceded it (Slovenia, Croatia, Bosnia and Herzegovina and Macedonia) were the Albanian separatists' patrons.

In the beginning, the national-separatists have tried to reach their separatist goals by instigating Albanians' mass demonstrations, staging strikes (miners, public officers), sabotage etc. with basic slogan of "Kosovo Republic". This slogan revealed the first stage of the Great Albania nationalists' program, since the obtaining of the Republic status would enable later secession according to the model applied by Slovenia, Croatia, Bosnia and Herzegovina and Macedonia. Behind the slogan was the goal of secession - seceding Kosovo and Metohija from Serbia and the FR of Yugoslavia part by part and annexing it to Albania. During the internal upheavals in Kosovo and Metohija in 1991, they had proclaimed "Kosovo Republic" (the so-called Kachanik Constitution) contrary to the Constitution and illegally, with the silent support of new patrons - certain international community circles, the same ones that had supported the breakdown of former Yugoslavia. The intention is obvious - to form parallel state structures that should enable the internalization of the Kosovo and Metohija issues, with the help of the benevolent foreign powers, to achieve the international political legitimacy and start the process of seceding Kosovo and Metohija from Serbia and the FR of Yugoslavia.

The radicalism i.e. the revival of terrorism as the means of the Albanian separatists in Kosovo and Metohija to achieve their goals was registered in 1992, under the auspices of the Kosovo Democratic Union. It had been established that the members of the self-proclaimed "Ministry of Defense and the Army Headquarters of the Republic of Kosovo" were acting upon instructions given by one of the Kosovo Democratic Union leaders, Anton Kolja and the then Minister of Defense of a foreign state - Albania, General Safet Culjalji. At the same time, the nationalistic political leader and the leader of the Albania Democratic Party Sali Berisha started rendering logistic services to the Kosovo and Metohija terrorists, regarding their training in the centers in the Northern Albania. The election of Sali Berisha as the President of the Republic in 1992 and the commencing of the Albanian state organization falling apart (the crumbling of the pyramidal money savings by the end of 1996, looting of weapons from the Albanian army storages, the security system - police -crack-up) encouraged further strengthening of supporting Albanian terrorism and separatism in Kosovo and Metohija. It is not a coincidence that the terrorist so-called "Kosovo Liberation Army" has voiced itself for the first time at this moment. Parallel to these processes, Albania is fully supporting the separatists and the terrorists in Kosovo and Metohija by recognizing the legitimacy of the illegal "Kosovo Republic" and enabling the "legation" of this not-existing state to operate in Albania. Albania is the only country that has recognized these illegal acts and the virtual State of Kosovo at the territory of another sovereign state contrary to all the international documents and principles. Within the same period, the Albanian separatist's terrorist organization has expanded, and next to the initially formed centers in Tirana and Elbasan, other centers have been formed, and from Italy, across the Adriatic, the channel for the transport of terrorists has been established.

In Albania there are in training the emigrants, terrorists from Kosovo and Metohija, terrorists from Albania, the Albanians living abroad and mercenaries from all around the world, including the mujahedins. At first indolent, later benevolent and often encouraging attitude of a part of the international political circles toward the terrorists, contributed to the escalation of terrorists' actions in the Autonomous Province of Kosovo and Metohija. The comparative review of the increase of the terrorist actions' number from 1991 to 1998 clearly explicates this:

year of	1991.	1992.	1993.	1994.	1995.	1996.	1997.	1998
No. of terrorist actions:	11	12	8	6	11	31	31	1885

The aspirations and the strategy of the Great Albania chauvinists

The political aspirations of the state and political structures of Albania and the Kosovo and Metohija national-separatists is, as always in history, the same - ethnically cleansed "Great Albania". Moreover, Kosovo and Metohija are the focus of all the Albanians' ambitions of forming such a phantom state and the starting point of actions by all means towards achieving this goal.

The role of Kosovo and Metohija in the Great Albania concept is a synthesis of different interests, some of them presented as the main ones. The most important and the strategic reason for gaining control over Kosovo and Metohija in forming the Great Albania is that this territory is at the center of the conceived policy and the state integrity. Having no control over it, the Albanians living in Macedonia would be cut off. The second reason is the extremely high percentage of Albanian population in this region. This is again the only ground upon which the separatists and the terrorists are building their claims of secession from Serbia and Yugoslavia.

Aside from the above said, it should be underlined that Kosovo and Metohija is the region extremely rich with natural resources and the roads linking Europe and the Near East are there. Within this context it should also be pointed out that Albania has always been supporting, inciting even, the separatist and terrorist activities because of that fact that it has never in its short history (it was established in 1912) been a stable and legal state. The Kosovo and Metohija "problem" has always been used to divert its own public's attention from internal problems toward the problems abroad. The freshest examples of this are the events in Albania by the end of 1996, since when the instability, upheavals, clashes and political and economic chaos have prevailed in this country. This is why Albania favors the Great Albanian nationalism, to transfer the blame for all its difficulties (the collapse of the state and a severe economic and social crisis) to an irrational ground. It also fits into the strategic plans of its latest patron - NATO - the securing of strategic position in the Balkans (strengthening of the NATO southern wing). Kosovo and Metohija is also the focus of NATO new geo-strategic stronghold. This is the reason the US (NATO) want to deploy troops in Kosovo and Metohija at any cost.

The Kosovo Metohija separatists and terrorists and the Great Albania extremists consider the new balance of political powers in the world as a chance to fulfill their centuries-long dream - secession of a part of Serbia and Yugoslavia State territory, which they have almost completely cleansed ethnically and annexing it to Albania. As in all the previous historical periods, for the completing of their own aspirations they are taking advantag of the strategic and hegemonic interests of the great powers, NATO in this case, which wants to control all the roads leading from Europe towards the Near East, i.e. the inland routes to the strategic raw materials (oil).

There is another factor in their favor: the interest of some of the Islamic states to turn Kosovo and Metohija into the catalyst of Islamism, i.e. to gain another stable and firm Islamic foothold (next to Bosnia and Herzegovina) within the well known concept of establishing the "Green transversal", i.e. an Islamic traverse running from Turkey to the Middle and Western Europe.

Terrorism - separatists' weapon

There are two basic reasons for the separatists to choose terrorism as means of achieving their objective. First, they did not succeed in bringing down the States of Serbia and Yugoslavia though a political process and non-violence. Their concept of gradually gaining complete independence by political pressures and blackmailing was foreclosed by the changes of the Serbian and Kosovo and Metohija Constitutions in 1989. Second reason being that this is the only way to destabilize the situation in Kosovo and Metohija and provoke reaction of the legal authorities, which would then be used to manipulate the international public, aiming to internationalize the problem and then attempting to solve it out of the legal state institutions, counting upon the help and support of a part of the international community. To achieve this, the Albanian separatists in Kosovo and Metohija, together with Albania, counted upon the full support of their new patron (NATO) and the proven recipe (in Slovenia, Croatia and Bosnia and Herzegovina) of pulling down sovereign states - aggression against a state using local terrorists, political pressures and blackmailing from abroad, logistic and financial aid from abroad and mercenaries from the third countries. The result of the decision to move from political means to terrorism was the big expansion of terrorism in Kosovo and Metohija in 1998.

The terrorists of the so-called "KLA" are attempting the "expelling of Serbia" from "their Kosovo" territory by mass terrorist attacks against the Ministry of the Interior members. Out of the total of 1885 terrorist attacks committed during the year of 1998, 1129 were aimed at the members and objects of the Security Service. 115 police officers were killed and 403 heavily or less heavily wounded. 15 police officers were abducted (3 killed, 3 released and the fate of 9 police officers is unknown).

During the same year, the terrorists in Kosovo and Metohija have carried out numerous terrorist actions against the civilians. During these they have killed:

- 46 civilians of Serbian and Montenegrin nationality;
- 77 civilians of Albanian nationality, loyal to the State of Serbia and Yugoslavia;
- 5 civilians Romanies;
- 14 civilians of different nationalities, public servants or employed with public services

Heavily or less heavily wounded 158 persons:

- **74 civilians of Serbian or Montenegrin nationality;**
- **72 civilians of Albanian nationality;**
- **3 civilians, members of the Goranci national community;**
- **9 civilians of other nationalities.**

Abducted a total of 293 civilians:

- 173 civilians of Serbian and Montenegrin nationality (13 were killed, 2 managed to escape, 68 released, the fate of 90 unknown);
- 101 members of Albanian nationality (16 killed, 8 escaped, 34 released, fate of 43 unknown);
- 14 Romanies (2 killed, fate of 5 unknown, 7 released);
- 2 Egyptians (fate unknown);
- 1 Yugoslav citizen from the former Yugoslav Republic of Macedonia (released);
- 2 civilians of other nationalities (fate unknown).

During 1998, the Albanian terrorists from the self-proclaimed Kosovo Liberation Army attempted 708 illegal border crossings (504 to FRY, 204 from FRY) in order to get training and weapons in Albania. 125 border incidents were caused, out of which a hundred armed attacks by several thousands of terrorists against Yugoslav border patrol units. Among the 715 killed, 366 wounded and 93 apprehended terrorists, the members of the Albanian national minority in Kosovo and Metohija were identified, Albanian citizens, Islamic fundamentalists and mujahedins from the Near East and Asia (many of them linked with Osama Bin Laden) and the mercenaries from European countries (including the countries of the former Yugoslavia). While performing the duties of securing the state border and preventing the infiltration of terrorists, 36 members of the Yugoslav Army were killed and 105 wounded. It should be mentioned that, while attempting illegal entries from the direction of Albania, in most cases, the terrorists were supported by the Albanian army members' shootings.

It should be underlined that the self-proclaimed KLA terrorists, for the first time after the end of the World War Two, have established camps for the persons imprisoned from all over Kosovo and Metohija (Junik, Glodjane, Izbica, Lipovica and other places) and in killing applied the most brutal methods characteristic of the Nazi-fascist period (the Klecka crematorium for burning down the Serbs and the Montenegrins, places of execution - Donji Ratis, Volujak and other).

The so-called KLA is a terrorist organization

Within the wide range of contradictory and hypocritical political approaches toward the events in Kosovo and Metohija, the most cynical are the attempts to portray the more than obvious terrorism of the so-called KLA as a "struggle to protect the endangered human rights", "armed people's resistance", "uprising", fighting back the "Serbian aggression".

"colonization", "apartheid", and the terrorists as the "armed Albanian formations", "Albanians' collective resistance", and when liquidated by the police as "civilians". This "covering up" of the terrorists and the relativizing of their responsibility and harmful activities are still present and represent the avoidance of any condemnation of terrorism and the terrorists by the international community and an open attempt at their silent recognition. Such an approach of the New World Order heads confirms the fact that in their activities regarding Kosovo and Metohija they are pursuing their own interests and not observing the international law and practice. The United Nations, the European Union, the Organization for Security and Cooperation in Europe and other influential political factors have been used as instruments by the United States and some of their allies and must not oppose them, although the so-called KLA activities by their essential qualities meet the generally accepted definition of the international terrorism. There are 120 definitions of terrorism, but none of them is generally accepted. However, there are certain common, generally adopted elements classifying a criminal activity as terrorist. Starting from this point, as well as by the theory on studying the modern terrorism, the self-proclaimed Kosovo Liberation Army is a terrorist organization by these standards: it is aiming to achieve the illegal political goal of seceding the Kosovo and Metohija Province from its mother country and annexing it to the neighboring State of Albania in order to create the "Great Albania" (within the ethnic borders settled by the Albanians).

The basic method of acting is to fight the police and not the Army.

They have killed a large number of police officers, soldiers and civilians and destroyed most of the property by applying brutal methods of terrorism and banditism and different kinds of weaponry.

- the so-called KLA is organized as a total of groups not strongly linked acting as terrorists and as criminals at the same time and with no subordination at all.

- conspiracy is the way of communicating among the leaders of the groups and the terrorists' close associates;

The United States of America are applying the definition (FBI) stating: " Terrorism is an illegal use of force or violence against people or property in order to intimidate or suppress the government, civil population or its part to achieve political or social goals". The so-called "KLA" actions can be categorized by this definition.

According to the Geneva Convention provisions the so-called KLA can also be classified as a terrorist organization because it ambushes innocent civilians and security forces, while the Convention recognizes the guerrilla war "if really there is a war", this not being the case here, since this is not a clash between two armies but the armed "civilians" are treacherously attacking victims of all the population structures, as well as the state bodies and officials. Besides, the guerrilla, as a rule, openly opposes the enemy.

Favoring the statement that this is a really terrorist organization is the linking to the Islamic fundamentalists-terrorist groups from the Near East, Afghanistan and some Asian countries as well as to the state terrorism committed against Serbia and Yugoslavia by Albania.

Considering all, the above mentioned undoubtedly confirms the fact that the separatist-terrorist organization, the so-called KLA, by all the international criteria, can be classified as terrorist. It is easy to suggest, bearing in mind the terrorists' aspirations, that their founders are the Kosovo and Metohija Albanian political leaders and that their foreign sponsors are Albania, the US, Germany and some other the western European countries. The patronage over the so-called KLA and the real reasons of avoiding to condemn it as terrorist is obvious in the statement of Christopher Hill, the US Ambassador to Skopje, who said by the middle of 1998: " Our concept does not necessarily mean that we are taking Kosovo out of Serbia, although the Albanians would very much like it. However, we want to, at least, take as large a part of Serbia as possible out of Kosovo, and to begin with, it is the matter of policemen". Considering the number of the terrorist attacks carried out during 1998 and then connect it to Ambassador Hill's wish to " pull out Serbia and its police forces" from Kosovo and Metohija, it is then obvious that this represents an open support to separatism and terrorism.

In such a political ambiance, formed by the bearers of global hegemony world wide, the causes and the consequences are totally mixed up, the thesis substituted, so that Serbia and Yugoslavia, the victims of the terrorist activities, are being cited as the aggressors and the terrorists, killers and kidnapers as the victims.

The influential international community persons in power are covering up their hypocrisy by verbal peacemaking, although their activity incites and prolongates the clashes in Kosovo and Metohija. The logical consequence of such support was a huge increase of the so-called KLA terrorists' attacks during 1998 all over Kosovo and Metohija. This has become particularly conspicuous after the signing of the Agreement between the Yugoslav President Slobodan Milosevic and the US Envoy Richard Holbrooke. Reacting to the Republic of Serbia partly withdrawing its police and the Yugoslav Army from Kosovo and Metohija, carried out not only as the fulfillment of obligations but also wishing to decrease the intensity of clashes and to solve the problems peacefully, through political dialogue, the terrorists of the so-called KLA have intensified their attacks. Since October 13, 1998 till February 11, 1999 the so-called KLA carried out 753 terrorist attacks.

Killed were 89 persons (19 police officers, 70 civilians)
Wounded: 160 (84 police officers, 76 civilians)
Kidnapped; 55 (6 police officers - two of them killed; 49 civilians - one killed) the fate of the rest of them is unknown.

During all that time, the international factor interpreted all these crimes as "provocations" and "reacting to the killing of Albanian civilians" and the words of condemnation were directed to the Serbia legal authorities.

whose all actions against the terrorists were immediately marked as "overuse of force", "massacre of the civilians", "uncontrolled military reaction", "humanitarian catastrophe" and the like.

At the same time, the open logistic and all other kinds of support and help given to the terrorist from Albania is either kept silent about or vindicated. The fact that the Albanian terrorists from Kosovo and Metohija are being trained at the centers located in Albania (Tirana, Elbasan, Bairam Curi, Tropoya, Kruma and other) by the Albanian army officers, some of the European countries intelligence services and the "jihad" warriors is obviously not disturbing anyone. The ample financial aid provided by the Albania narco-mafia and some Islamic countries to the so-called Kosovo Liberation Army is not being met by an adequate reaction of the countries which rigorously suppress such aid within their territories.

When all this is known it is no wonder that the so-called KLA terrorist organization that is surely occupying the first position in crimes committed in 1998 is not only not included in the list of terrorist organizations, but the pressures made by some of the countries are being increased, first of all by the US. that KLA should be presented as a legal political partner and full-fledged negotiator at the dialogue held on Kosovo and Metohija. At the same time the US is mercilessly combating terrorists threatening it and does not even shirk of attacking the terrorists stationed in the sovereign countries' territories, while, threatening with NATO actions prevents Serbia and Yugoslavia to combat terrorism at their own territory.

Crime as a source of financing terrorism

A multitude of reliable data points to the fact that the most important sources of finance for the terrorist activities in Kosovo and Metohija originate from the criminal activities of the Albanian mafia: drug-trafficking in the US, Switzerland, Germany, Belgium, Great Britain and other European countries (drug-routes Asia-Europe- the US); weapon smuggling and trafficking from some of the European and Arab countries; racketeering, blackmailing and violent actions against the Albanian national community members at work abroad; prostitution, faking documents and illegal entries of the Kosovo and Metohija Albanian and other citizens from countries out of Europe to the US and European countries; the trading of human organs ; Albanian nationality minors' begging; armed robberies and frauds and other kinds of criminal activities. The wide range of the Albanians engaged in criminal activities, organized on grounds of national membership, no matter whether they are citizens of Albania, Yugoslavia, Macedonia or Greece, leaning on the clan principles, are among the world and Europe largest criminal structures. Particularly dangerous and "successful" is the Albanian narco-mafia, whose profit ranks as the third in Europe, according to the experts' estimations.

A large portion of profit made in this way is used for financing the parallel and illegal "state" in Kosovo and Metohija, and supplying the terrorists with the state-of-art weaponry. The smuggling of weapons

transported through Albania to Kosovo and Metohija has reached an enormously large scale.

A remarkable income has been gained by racketeering the Albanians working abroad. They are forced to regularly pay at least 30 percent of their earnings to the Albanian terrorist representatives' accounts in many Western European countries, the US and Canada and there are positive proofs that these, and even larger funds are being provided by threats, blackmailing and maltreating the ones who refuse to do so. The Albanian nationality citizens in Kosovo and Metohija are forced to pay "taxes" to the separatists, while at the same time they are not paying their legal obligations. The separatists' leaders immediately qualify any serious attempt at implementing law (payment of taxes, dues etc.) as "pressure" and " violence against the Albanian civilians" although these are the duties to be performed by all the citizens, no matter of which nationality.

The international solidarity in combating terrorism

The Albanian terrorism is largely financed by the Islamic fundamentalists from Saudi Arabia, Afghanistan and other Moslem countries, as well as by some of the western intelligence services. This can not possibly be done without the knowledge and assent of these countries' political factors.

Although there is an international-legal obligation of all the countries not to stimulate or tolerate the financing of terrorist activities against other countries, a part of the international community is not fulfilling this obligation. The applying of double standards serves to secure the political and other interests of the international key factors. Beside the UN Charter, the documents prohibiting financing and any other kind of supporting terrorism and generally condemning any kind of terrorist activity are: The UN General Assembly resolution, dated December 21, 1965; The Resolution - Declaration on the methods of implementing the international law and cooperation of states; Resolution 2625/25 dated October 24, 1970; Resolution - Declaration on improving the international security No. 2734/25 dated December 16, 1970; Resolution No. 3314 of December 14, 1974 and many other international documents among which the UN Security Council Resolutions Nos. 1160, 1199 and 1203 should be counted in, as well as the most recent UN General Assembly resolution No. 53/108 of January 26, 1999.

The Conference on suppressing terrorism in the world, held in 1997 in Cairo statements are in the same line. This particular summit of Heads of States and Governments named terrorism as the greatest global evil of the modern world, and the Conference conclusions call for joint combating terrorism by all the countries in the world and for mutual aid and cooperation in its prevention. For the bearers of adverse, violent or willful behavior, be it advocating globalism, hegemony, religion or ideology, these valid documents are obligatory, but are not presenting an obstacle in their attempts to achieve their own interests in the Balkans, following closely the implementation of the double standards. Instead of cutting off the roots of terrorism, being aware of it or not, they have become its accomplices.

The Serbia and Yugoslavia State bodies legally combating terrorism

To protect the State from the Albanian separatist terrorism and maintain the order and safety of all the citizens of the Province, the police officers have undertaken legal anti-terrorist actions. Against the police officers, in course of duty, in the year of 1998 the Albanian terrorists committed 1129 attacks, in which 115 police officers were killed, 403 heavily or less heavily wounded and 15 kidnapped - out of which 3 were killed and 9 are recorded as missing.

Nevertheless, what is legitimate in combating terrorism in the US, Northern Ireland, Spain (Basque), France (Corsica) and other countries, was declared illegal in Serbia and Yugoslavia by the will of the world powers and NATO. Their aggressive informing and media promotions of new notions as: "overuse of force", " police forces' extreme activities", "humanitarian catastrophe among the Albanians" and others, are aimed at preventing the legal security forces to crack up terrorism in Kosovo and Metohija. The terrorists are constantly being pardoned. The UN Security Council Resolutions Nos. 1160, 1199 and 11203 not only do not condemn the terrorist so-called KLA, but are being used to put pressure upon the FR of Yugoslavia. In this way, the international documents are being also used to openly support terrorism and the terrorists in Kosovo and Metohija. Under the pressures comming from the US, the highest ranking UN officials can not fulfill their duty of objectively in protecting the legality and the UN Charter. Kofi Annan, the UN Secretary General, on June 5, 1998, talking about the anti-terrorist activities of the police in Kosovo and Metohija states: "If the world is to learn something from the dark chapters of history, then it should be that this kind of aggression (police combating terrorists) should be immediately and decisively fought back"

All the above mentioned enabled the terrorists to reorganize and continue with their criminal activities. The Republic of Albania, openly, before the eyes of the international community and international observers in this country and in Kosovo and Metohija, continues with its direct and unpunished helping the so-called KLA terrorists. The range of the armed logistics from Albania for committing terrorist attacks in Kosovo and Metohija, is proven by the UN Undersecretary for disarmament, Dzayant Danapolo's statement, given on the grounds of the official findings of a special UN mission in Albania that from the Albania armed forces storage houses around 650000 pieces of weaponry, 1.5 billions of ammunitions and 20000 tons of explosives were stolen, and that it is a known fact that around 200000 pieces of weaponry was smuggled into Kosovo and Metohija. Of course, to that number the weapons and ammunition for the terrorists should be added, supplied by some western intelligence services and the Albanian mafia from all over the world, through the training and arming centers of the so-called KLA terrorists in Northern Albania. There is also the NATO weaponry and state-of-art equipment, including the weapons banned by the international conventions. The international factors, closely following the intentionally created stereotype of Serbia and Yugoslavia being the solely responsible, are ignoring the open terrorist aggression against a sovereign state - the FR of Yugoslavia.

What in most of the countries in the world is considered as the biggest crime - attacking, killing and kidnapping police officers - in Serbia and Yugoslavia is qualified with bias as "the resistance to oppression", "the enslaved people fight for liberation" or "the authorities' retaliating against civilians". This is being used as the "legal" foundation for the constant insisting to decrease the number of the police forces in Kosovo and Metohija, while the terrorist are intensifying their attacks, all the more directing them to city environments.

The strategic goal of such policy is clear - to gradually expel the legal bodies of Serbia from Kosovo and Metohija and enable the complete taking over of the Province by the Albanians and future secession.

Serbia and Yugoslavia determined to reach peaceful solution

Notwithstanding such a constellation and relations regarding Kosovo and Metohija, Serbia and Yugoslavia advocate a principled political position that all the issues concerning this southern Serbian Province should be resolved peacefully, through democratic dialogue and serving the interests of all the national communities living in Kosovo and Metohija. Serbia and Yugoslavia do not need any NATO threats of military intervention in order to reach peace, since such an orientation had been voiced long time ago. The Agreement between the Yugoslav President Slobodan Milosevic and the Ambassador Richard Holbrooke should have presented the true picture on Kosovo and Metohija to the foreign factors, as well as of the events in fact occurring there and contribute to the peaceful solution. The Serbia and Yugoslavia good will was proven by full implementation of the agreements reached. The legitimate police forces have partly withdrawn from Kosovo and Metohija, the bases of these forces were closed at the places inhabited, and the checkpoints at the traffic routes removed, and the Kosovo Verification mission tasks secured, i.e. verification.

Following the reaching of the Agreement, the Serbian government and the representatives of all the national communities in Kosovo and Metohija signed the Declaration on the political frameworks of self-rule in Kosovo and Metohija. Only the representatives of the disunited national-separatists Albanian parties were missing. Multiple invitations were sent by the Serbian Government to start the political dialogue but in vain. Thus Serbia and Yugoslavia have not only de facto fulfilled the obligations from the relevant UN Security Council resolutions, the Agreement and the European Union and the Contact Group conclusions, but have also shown a sincere interest to resolve the problems in the shortest possible time through open dialogue, observing the basic principles agreed upon with Ambassador Richard Holbrooke. The most important of all being the safeguarding of the territorial integrity and sovereignty of Serbia and the FR of Yugoslavia, observing the minority rights by the highest European and world standards, granting autonomy that could not surpass the frameworks of the Serbian and the FR of Yugoslavia Constitution and reaching the agreement that would equally protect all the national communities living in Kosovo and Metohija.

All the Serbia and the FR of Yugoslavia endeavors mentioned here were met with more fierce terrorist attacks of the so-called KLA terrorist against the army and police members, representatives of the state authorities and innocent civilians. By its brutality, the attack at the café "Panda" in Pec stands out, when the Albanian terrorist killed six Serbian boys aged 15 - 31.

There is no doubt that such behavior of the terrorists is greatly appropriate to the part of the international community attitude (the Verification mission), as well as the increased political activities and all other kinds of help provided by the Republic of Albania. Were it quite clear to everybody what is really happening in Kosovo and Metohija and who is attacking whom, and who is protecting whom, numerous proofs could be presented. Especially illustrative is the staged case of "massacre of the Albanian civilians" in the Village of Racak, a media manipulation aimed to divert the attention from the Albanian terrorist more frequented and most cruel crimes and at the same time "create' the conditions for the continuation and intensifying of pressures and threats against Serbia and the FR of Yugoslavia. The public statement of Dan Everts, the Head of the OSCE mission in Albania, issued by the beginning of January, 1999 that "it could not be negated that the North of Albania is the base for the KLA members military training", did not result in even serious condemnation of Albania by the international community, strangely reacting to any anti-terrorist police action in Kosovo and Metohija. The arresting of one of the Osama Bin Laden fundamentalist-terrorists group member (Max Ciciku), assigned for terrorist activity in Kosovo and Metohija, judging by the US verbally advocating the persecution and punishment of all kinds of terrorism, particularly the one imperiling the US themselves (Bin Laden is the first on the list of the greatest terrorists sought after by the US), presents strong enough grounds for taking measures against Albania in order to prevent its further open support of terrorists, meaning jeopardizing the Serbia and FR of Yugoslavia sovereign territory. The Albanian Parliament resolution, dated December 28, 1998 "demanding a strong support of the Albanian government and State to the Kosovo brothers", by every international standard represents aggression against the neighboring country. The meetings of Albania State and political officials with the so-called KLA terrorists in Tirana, are gross examples of a subversive policy, aimed against the integrity and sovereignty of the FR of Yugoslavia, one of the United Nations members.

Nevertheless, the foreign advocates of the use of force against the FR of Yugoslavia favor further threats and pressures, even military, to Serbia and Yugoslavia as the ones solely responsible for the situation and for the problems in Kosovo and Metohija, turning a blind eye to the flagrant terrorism and separatism.

The so-called "KLA" terrorists and Albania - their inspirer and helper - although having committed countless crimes and attacks are being released, for the present, of the responsibility of inciting a crisis in the region with as yet unforeseeable consequences.

The crisis in Kosovo and Metohija can not be resolved as long as the Albanian terrorists are not publicly and decisively qualified as terrorist same as the terrorists in other parts of the world, their activity unequivocally condemned and all the necessary measures undertaken to deny them all the help and support from abroad, and enable the rest of Kosovo and Metohija inhabitants to openly and freely, not fearing for their own and the lives of their family, voice their opinions on the coexistence of all the national communities in Kosovo and Metohija.

- - - - -